

Wood, J  
Part I

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Commodity Futures Trading Commission,

04 CV 4293  
14 CIV

Plaintiff,

v.

Axess Trade Co., Inc.

Defendant.

(PROPOSED) EX PARTE STATUTORY  
RESTRAINING ORDER FREEZING  
DEFENDANT'S ASSETS, PROHIBITING  
DEFENDANT FROM DESTROYING OR  
ALTERING ANY OTHER DOCUMENTS  
AND BARRING THE DEFENDANT  
FROM DENYING ACCESS TO ANY  
REPRESENTATIVE OF PLAINTIFF

COMMODITY FUTURES TRADING COMMISSION

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Plaintiff, the Commodity Futures Trading Commission ("Commission"), has filed a Complaint for permanent injunction and other relief, and moved pursuant to Section 6c of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 13a-1 (2002), for a statutory restraining order freezing the assets of the Defendant, prohibiting Defendant from destroying any business records, books or documents and barring the Defendant from denying access to any

representative of the Plaintiff. The Court has considered the pleadings, declarations, exhibits, and memorandum filed in support of the Commission's motion. As it appears to the Court that the Court has jurisdiction over the subject matter of this case, that Section 6c of the Act, 7 U.S.C. § 13a-1, authorizes *ex parte* relief, that there is good cause to believe that Defendant has engaged in, is engaging in or is about to engage in violations of the Act, and that this is a proper case for granting an *ex parte* statutory restraining Order to preserve the status quo, protect public customers from loss and damage, and enable the Commission to fulfill its statutory duties, the Court orders as follows:

### **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 reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.
2. "Defendant" means Axess Trade Co., Inc. a Panamanian corporation conducting business in the State of New York.

### **RELIEF GRANTED**

#### **I.**

#### ***Asset Freeze***

**IT IS HEREBY ORDERED** that the Defendant and all persons or entities who receive notice of this Order by personal service or otherwise, 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 in which Defendant has

an interest, and assets held outside the United States, except as ordered by the Court, including both existing assets and assets acquired after the date of this order; and

- B. opening or causing to be opened any safe deposit boxes titled in the name of, or subject to access by, the Defendant.

**II.**

***Maintenance of and Access to Business Records***

**IT IS HEREBY ORDERED** that the Defendant 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 or personal finances of Defendant, its agents, attorneys, partners, servants, representatives, employees, attorneys, any person(s) acting or purporting to act for or on their behalf, and corporate and partnership entities in which Defendant has an interest.

**III.**

***Inspection and Copying of Books and Records***

**IT IS FURTHER ORDERED** that representatives of the Commission be immediately allowed to inspect the books, records, and other documents of the Defendant, its agents, attorneys, partners, servants, representatives, employees, any person(s) acting or purporting to act for or on their behalf, and corporate and partnership entities in which Defendant has an interest, including, but not limited to, electronically stored data, tape recordings, and computer discs, wherever they may be situated and whether they are in the person of the Defendant or others, and to copy said documents, data and records, either on or off the premises wherever they may be situated.

**IV.**

***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, controls, or maintains custody of any account or asset, or at any time since September 1, 2003, has held, controlled, or maintained custody of any account or asset of the Defendant shall:

- A. Prohibit Defendant 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 Defendant and all other persons (except Commission representatives) access to any safe deposit box that is:
  - 1. titled in the name of the Defendant either individually or jointly;  
or
  - 2. otherwise subject to access by the Defendant;
- 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 and every account or asset titled in the name, individually or jointly, of, or held on behalf of, or for the benefit of, the Defendant;
  - 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, and 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 the Defendant or is otherwise subject to access by the Defendant;
- 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, and safe deposit box logs.

**V.**

***Accounting***

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

- A. Provide the Commission with a full accounting of all funds and assets both within and outside of the United States which are held by defendant, on its behalf, or under its direct or indirect control, whether jointly or singly, or in which it has an interest;
- B. Transfer to the territory of the United States all funds, documents, and assets located in foreign countries which are held by defendant, for its benefit, or under its direct or indirect control, whether jointly or singly;
- C. Provide the Commission access to all records of defendant held by financial institutions located both within and outside the territorial United States by signing a Consent to Release of Financial Records; and
- D. Provide the Commission with a complete customer list, including, without limitation, the names, addresses and telephone numbers of all persons who transferred funds to the defendant or relief defendant from January 1, 2003 to the present.

**VI.**

***Service of Order***

**IT IS FURTHER ORDERED** that copies of this Order may be served by any means, including facsimile transmission, upon any entity or person that may have possession, custody, or control of any documents or assets of the Defendant or that may be subject to any provision of this Order, and, additionally, that representatives of the Commission, are specially appointed by the Court to effect service. Service of the summons, Complaint or other process may be effected by U.S. Marshal or deputy U.S. Marshal, or in accordance with Fed. R. Civ. P. 4.

**VII.**

*Order to Show Cause*

IT IS FURTHER ORDERED that the Defendant shall appear before this Court on the ✓ 15 day of June, 2004, at 4 p.m., before the Honorable J. Casey at the United States Courthouse for the Southern District of New York, to show cause why this Court should not enter a Preliminary Injunction enjoining Defendant from further violations of the Act, and 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 the Defendant, such materials shall be filed, served and received by all parties at least two (2) days before the hearing ordered above.

**VIII.**

***Bond Not Required of Plaintiff***

Plaintiff Commission is an agency of the United States of America and, accordingly, no bond need be posted by the Commission.

**IX.**

***Force and Effect***

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 City, New York on this 7<sup>th</sup> day of June, 2004, at

✓ 11:47 a.m.

Michael M. Wood  
UNITED STATES DISTRICT JUDGE

Part I

