

**In The United States District Court  
For The Northern District Of Illinois  
Eastern Division**

**Commodity Futures Trading Commission,  
Plaintiff,**

vs.

**John M. Marshall, Stephen Z. Adams,  
Brookshire Raw Materials Group, Inc.  
Brookshire and Company, Ltd. and  
Brookshire Raw Materials Management, LLC,**

**Defendants and**

**Brookshire Raw Materials Group Trust  
Relief Defendant.**

**Civil Action No: 09 C 1056**

***Ex Parte* STATUTORY RESTRAINING ORDER**

The Court having read the Complaint for Injunctive and Other Equitable Relief, the Plaintiff's Motion for an *Ex Parte* Statutory Restraining Order ("SRO"), the Brief in Support of Plaintiff's Motion for a SRO, the Declarations of Joy McCormack and other individuals, Allen Korbel, Keith Thompson, and Gary M. Sugar, and the exhibits and attachments thereto, and all other papers filed herein by the Plaintiff, Commodity Futures Trading Commission ("CFTC"),

**THE COURT FINDS:**

1. The Court has jurisdiction over the subject matter.
2. Section 6c(a) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 13a-1(a), 7 U.S.C. § 13a-1 (2006), 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 (2008) permits this Court to enter an *ex parte* statutory restraining order ("SRO").
3. It appears to the satisfaction of the Court that there is good cause to believe that the Defendants, have engaged, are engaging in and are about to engage in violations of §§ 4(b)(a)(2)(i)-(iii), and the amendments thereto 4(b)(a)(2)(A)-(C), 4o(1) and 4n(3)(A) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), 6b(a)(2)(A)-(C), 6o(1), 6n(3)(A) and Commission Regulations 1.31 and 4.7(b)(4), 17 C.F.R. §§ 1.31 and 4.7(b)(4) (2008), thereunder. There is good cause to

believe further that pool participants may be cheated and defrauded and that immediate and irreparable damage to the Court's ability to grant effective final relief for pool participants in the form of monetary redress will occur from the destruction of records unless the Defendants are immediately restrained and enjoined by Order of this Court and, accordingly, there is good cause to issue this Order.

4. It further appears to the satisfaction of the Court 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 CFTC to fulfill its statutory duties

## ORDER

### **DEFINITIONS**

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

5. "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, brokerage firms or futures commissions merchants, credits, receivables, lines of credit, contracts including spot and futures contracts, insurance policies, and all cash, wherever located.

6. 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, 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.

7. "Defendants" mean John M. Marshall, Stephen Z. Adams, Brookshire Raw Materials Management, LLC, Brookshire Raw Materials Group, Inc. and Brookshire and Company, Ltd. and any person insofar as he or she is acting in the capacity as an officer, agent, servant, employee or attorney of any of the Defendants, individually or jointly, and any person who receives actual notice of this Order by personal service or otherwise, including Federal Express or other commercial overnight service, email or facsimile or pursuant to Federal Rule of Civil Procedure 4 and Articles 2 through 10 of the Hague Convention, Service Abroad of Judicial and Extrajudicial Documents.

**RELIEF GRANTED**

**STATUTORY RESTRAINING ORDER**

**I. ASSET FREEZE**

**IT IS ORDERED** that Defendants, Relief Defendant and their agents, servants, employees, successors, assigns, attorneys and all persons insofar as they are acting in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including Federal Express or other commercial overnight service, email or facsimile or pursuant to Federal Rule of Civil Procedure 4 and Articles 2 through 10 of the Hague Convention, Service Abroad of Judicial and Extrajudicial Documents, from directly or indirectly dissipating, withdrawing, transferring, removing, concealing or disposing of any cash, cashier's checks, funds, assets or other property of, or within the custody, control or actual or constructive possession of Defendants or Relief Defendant, including, but not limited to, all funds, personal property, money or securities held in Defendants' or Relief Defendant's name, all funds on deposit in any safety deposit box, financial institution, futures commission merchant, custodian, brokerage firm, bank or savings and loan account held by, under the actual or constructive control, or in the name of Defendants or Relief Defendant, all funds or property of Defendants' investors, wherever located, whether held in the name of the Defendants, individually or jointly, or any other entity owned or controlled by Defendants, or held on behalf of the Defendants, at anytime since October 1, 2005.

**IT IS FURTHER ORDERED** that, pending further Order of this Court, each bank, financial or brokerage firm, futures commission merchant, or business entity, or person that holds, controls, or maintains custody of any funds, assets or other property of Defendants or Relief Defendant, or has held, controlled, or maintained custody of any funds, assets or other property of Defendants or Relief Defendant, including, but not limited, to NewEdge USA, LLC, HSBC Bank, USA, Harris Bank, and Wachovia Bank, and who receives notice of this Order by any means, including facsimile or email or Federal Express or other commercial overnight service or pursuant to Federal Rule of Civil Procedure 4 and Articles 2 through 10 of the Hague Convention, Service Abroad of Judicial and Extrajudicial Documents, shall:

A. Prohibit Defendants and Relief Defendant and any other person 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 or Relief Defendant, and all other persons access to any safe deposit box that is:

1. titled in the name of Defendants or Relief Defendant, either individually or jointly; or
2. otherwise subject to access by the Defendants;

C. Provide counsel for the CFTC 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 of Defendants or Relief Defendant, individually or jointly, or held on behalf of, or for the benefit, of the Defendants or Relief 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 of Defendants or Relief Defendant, individually or jointly, or is otherwise subject to access by the Defendants;

D. Upon the request by the CFTC, promptly provide the CFTC 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, wire transfers to and from the accounts, 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 CFTC relating to implementation of this Order, including producing records related to Defendants' and Relief Defendant's accounts and Defendants' businesses.

## **II. PROHIBITION OF DESTRUCTION OF BOOKS AND RECORDS**

**IT IS FURTHER ORDERED** that Defendants and their agents, servants, employees, successors, assigns, attorneys and all persons insofar as they are acting in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including facsimile, email or Federal Express or other commercial overnight service or pursuant to Federal Rule of Civil Procedure 4 and Articles 2 through 10 of the Hague Convention, Service Abroad of Judicial and Extrajudicial Documents, are restrained and enjoined from directly or indirectly destroying, mutilating, concealing, altering or disposing of, in any manner, any of the books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants or Relief Defendant wherever located, including all such records concerning the Defendants' business operations;

## **III. ACCESS TO AND INSPECTION OF BOOKS AND RECORDS**

**IT IS FURTHER ORDERED** that Defendants must permit representatives of the Plaintiff CFTC to immediately inspect the books, records and other electronically stored data, tape recordings, and other documents of the Defendants and Relief Defendant and their agents, including all such records of Defendants' business operations, wherever they are 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 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;

**IT IS FURTHER ORDERED** that Defendants and their agents, servants, employees, successors, assigns, attorneys and all persons insofar as they are acting in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including facsimile, email or Federal Express or other commercial overnight service or pursuant to Federal Rule of Civil Procedure 4 and Articles 2 through 10 of the Hague Convention, Service Abroad of Judicial and Extrajudicial Documents, from directly or indirectly refusing to make available for inspection by the CFTC, when as requested, any books, records, documents correspondence, brochures, manual, electronically stored data, tape records or other property of Defendants and Relief Defendant wherever located, including, but not limited to, all such records of Defendants' business operations.

#### IV. REQUIRED ACCOUNTING

**IT IS FURTHER ORDERED** that Defendants shall prepare, sign and file with the Court, by March 30, 2009, a complete and accurate accounting for the period of September 6, 2006, to the date of such accounting, which shall be no earlier than the date of this Order. Such accounting shall include, without limitation, the identification of:

- A. All banks, futures commissions merchants, financial or brokerage institutions, including account numbers, which hold or have held funds, securities, commodity interests, assets, liabilities, and other property currently owned or controlled (legally, equitably or otherwise) directly or indirectly by Defendants and Relief Defendant, whether individually or jointly;
- B. All funds, securities, commodity interests, assets, liabilities, and other property currently owned or controlled (legally, equitably or otherwise) directly or indirectly by Defendants or Relief Defendant, whether individually or jointly;
- C. All funds, securities, commodity interests, assets and other property received directly or indirectly by Defendants or Relief Defendant, describing the source, amount, disposition, and current location of each listed item;
- D. All funds, securities, commodity interests, assets and other property transferred or otherwise disposed of directly or indirectly by the Defendants or Relief Defendant, describing the source, amount, disposition, and current location of each listed item, including accounts or assets of Defendants or Relief Defendant held by any bank, futures commission merchant, financial or brokerage institutions located inside and/or outside the territorial United States;
- E. All customers of Defendants, including name, address, telephone number and email, account number, deposit and withdrawal dates and amounts; and
- F. The names and last known addresses of each bailee, debtor or other person or entity currently holding any funds, securities, commodity interests, assets or other property owned or controlled (legally, equitably or otherwise) by Defendants, whether individually or jointly.

Defendants are further ordered to immediately identify and provide an accounting for all assets and property that is currently maintained outside the United States, including but not

limited to all funds on deposit in any bank, futures commission merchant, financial or brokerage institution, including but not limited to funds held by, under the control of, or in the name of the Defendants, whether jointly, individually or otherwise.

**V. SERVICE OF ORDER**

**IT IS FURTHER ORDERED** that copies of this Order may be served by any means, including facsimile transmission, email and Federal Express or other commercial overnight service or pursuant to Federal Rule of Civil Procedure 4 and Articles 2 through 10 of the Hague Convention, Service Abroad of Judicial and Extrajudicial Documents, upon any financial institution, FCM, bank, brokerage firm or other entity or person that may have possession, custody, or control of any documents or assets of the Defendants or Relief Defendant, or that may be subject to any provision of this Order. Joy McCormack, an employee of the CFTC, is hereby specially appointed to serve process, including this Order and all other papers in this cause. Additionally, Joy McCormack is hereby granted leave, *instanter*, to effectuate service of process, including this Order and all other papers in this cause, pursuant to Federal Rule of Civil Procedure 4 and Articles 2 through 10 of the Hague Convention, Service Abroad of Judicial and Extrajudicial Documents.

**IT IS FURTHER ORDERED** that the Defendants and Relief Defendant shall serve all pleadings, correspondence or notices required by this Order, and other materials on the CFTC by delivering a copy to, Elizabeth M. Streit, Trial Team Leader or Brigitte C. Weyls, Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 525 W. Monroe, Suite 1100, Chicago, Illinois 60661.

**VI. COURT MAINTAINS JURISDICTION**

**IT IS FURTHER ORDERED** that this Statutory Restraining 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. FURTHER COURT HEARINGS**

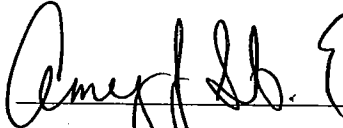
A. **IT IS FURTHER ORDERED** that this matter is set for a status hearing on \_\_\_\_\_

\_\_\_\_\_.

B. IT IS FURTHER ORDERED that Plaintiff's Motion for a Preliminary Injunction is set for hearing on 3/2/09 at 8:30.

**IT IS SO ORDERED.**

Signed at 2:20 o'clock am/pm on the 19<sup>th</sup> day of February, 2009

  
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Honorable Amy J. St. Eve  
UNITED STATES DISTRICT JUDGE  
Northern District of Illinois