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16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA

18 SACV09-0578 JVS (RNBx)

19 Case No.:

20 U.S. Commodity Futures Trading
Commission,

21 Plaintiff,

22 vs.

23
24 Gordon A. Driver, Axxess Automation
25 LLC, and Axxess Fund Management
26 LLC,

27 Defendants.

COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE RELIEF
AND FOR CIVIL MONETARY
PENALITIES PURSUANT TO THE
COMMODITY EXCHANGE ACT,
AS AMENDED, 7 U.S.C. §§ 1-*et seq.*

28 DEMAND FOR JURY TRIAL

1 I. SUMMARY

2 1. From at least in or about February 2006 through the present
3 (“Relevant Period”), Defendant Gordon A. Driver (“Driver”), from at least in or
4 about October 2007 through the present Defendant Axxcess Automation LLC
5 (“Axxcess Automation”), and from at least in or about July 2008 through the present
6 Defendant Axxcess Fund Management LLC (“Axxcess Fund Management”)
7 (collectively “Defendants”) engaged in a fraudulent Ponzi scheme in which they
8 solicited or caused to be solicited at least \$13.5 million from over 100 participants
9 in the United States and Canada to participate in commodity pools to trade
10 commodity futures and options, including S&P 500 e-Minis.

11 2. To induce participation in the pools operated by Driver, Axxcess
12 Automation and Axxcess Fund Management, Driver told prospective participants
13 that he had successfully traded commodity futures and could obtain for them
14 returns of 10-20% per month.

15 3. Instead of trading all of the pool participants’ funds, Defendants only
16 traded a portion of the pool funds, misappropriated some of them, and returned
17 some to pool participants as purported profits, in a manner typical of a Ponzi
18 scheme. The pool funds that Defendants traded were nearly all lost trading but
19 none of the trading losses were disclosed to pool participants.

20 4. To conceal the trading losses and the misappropriation, Defendants
21 issued or caused to be issued false periodic statements. These statements falsely
22 reflected both highly profitable returns from trading commodity futures on behalf
23 of the pool and that the pool was increasing in value and assets.

24 5. In addition, from at least in or about February 2006 to in or about
25 September 2008 Defendant Driver, and from at least October 2007 through the
26 present Defendant Axxcess Automation each acted as an unregistered commodity
27 pool operator.

28

1 6. Defendant Axxcess Fund Management also failed to produce books and
2 records requested by the Commodity Futures Trading Commission (“Commission”
3 or “CFTC”).

4 7. By virtue of this conduct and the further conduct described herein,
5 Defendants have engaged, are engaging, and/or are about to engage in fraudulent
6 acts and practices that violate the anti-fraud provisions of Section 4o(1) of the
7 Commodity Exchange Act (the “Act”), 7 U.S.C. § 6o(1) (2006), Sections
8 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) for conduct before June 18,
9 2008, and for acts on or after June 18, 2008, Section 4b(a)(1) of the Act, as
10 amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-
11 246, Title XIII (the CFTC Reauthorization Act (“CRA”)), § 13102, 122 Stat. 1651
12 (effective June 18, 2008), to be codified at 7 U.S.C. § 6b(a)(1).

13 8. By failing to register with the Commission while acting as a
14 commodity pool operator, Defendants Driver and Axxcess Automation violated
15 Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

16 9. By virtue of the conduct described herein, Defendants Driver, Axxcess
17 Automation and Axxcess Fund Management commingled, are commingling, and are
18 about to commingle pool property with non-pool property in violation of
19 Commission Regulation (“Regulation”) 4.20(c), 17 C.F.R. § 4.20(c) (2008).

20 10. By refusing to produce books and records requested by the
21 Commission, Defendant Axxcess Fund Management violated Section 4n(3)(A) of
22 the Act, 7 U.S.C. § 6n(3)(A), and Regulations 1.31(a) and 4.23, 17 C.F.R. §§
23 1.31(a) and 4.23.

24 11. As the controlling person of Axxcess Automation and Axxcess Fund
25 Management, Defendant Driver is liable for their violations, pursuant to Section
26 13(b) of the Act, 7 U.S.C. § 13c(b), because he did not act in good faith or
27 knowingly induced, directly or indirectly, the acts constituting Axxcess
28 Automation’s and Axxcess Fund Management’s violations.

1 12. Defendants Access Automation and Access Fund Management are
2 liable for Defendant Driver's violations pursuant to Section 2(a)(1)(B) of the Act, 7
3 U.S.C. § 2(a)(1)(B), because he was acting within the scope of his employment or
4 office with these entities.

5 13. Accordingly, the Commission brings this action pursuant to Section 6c
6 of the Act, 7 U.S.C. § 13a-1, to enjoin Defendants' unlawful acts and practices and
7 to compel Defendants' compliance with the Act and the Regulations. In addition,
8 the Commission seeks civil monetary penalties and remedial ancillary relief,
9 including, but not limited to, preliminary and permanent injunctions, trading and
10 registration bans, restitution, pre-judgment and post-judgment interest, and such
11 other relief as the Court may deem necessary and appropriate.

12 14. Unless restrained and enjoined by the Court, Defendants are likely to
13 continue to engage in the acts and practices alleged in this Complaint and in
14 similar acts and practices as more fully described below.

15 II. JURISDICTION AND VENUE

16 15. The Court has jurisdiction over this action pursuant to Section 6c(a) of
17 the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive
18 relief against any person whenever it shall appear to the Commission that such
19 person has engaged, is engaging, or is about to engage in any act or practice
20 constituting a violation of the Act or any rule, regulation, or order thereunder.

21 16. Venue properly lies with the Court pursuant to Section 6c(e) of the
22 Act, 7 U.S.C. § 13a-1(e), in that Defendants transact business in this District, and
23 acts and practices in violation of the Act have occurred, are occurring, or are about
24 to occur within this District.

25 III. THE PARTIES

26 17. **Plaintiff U.S. Commodity Futures Trading Commission** is an
27 independent federal regulatory agency charged with the responsibility for
28 administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.*

1 18. **Defendant Gordon A. Driver** is a resident of Las Vegas, Nevada and
2 has been registered with the Commission as an Associated Person (“AP”) of
3 Axxess Fund Management since September 2008 and is listed as its principal.
4 Driver is also the founder and owner of Axxess Automation, and Axxess Fund
5 Management. Prior to 2007, Driver was a resident of Oxnard, California.

6 19. **Defendant Axxess Automation LLC** is a Nevada limited liability
7 company with its principal place of business in Las Vegas, Nevada. Axxess
8 Automation has previously used mailing addresses in Niagara Falls, New York and
9 Mission Viejo, California. Axxess Automation has never been registered with the
10 Commission in any capacity.

11 20. **Defendant Axxess Fund Management LLC** is a Nevada limited
12 liability company with its principal place of business in Las Vegas, Nevada.
13 Axxess Fund Management has been registered with the Commission as a
14 Commodity Pool Operator (“CPO”) since July 2008. Axxess Fund Management
15 operates a commodity pool called Axxess Fund LP.

16
17 **IV. FACTS**

18 **A. Axxess Automation**

19 21. Section 1a(5) of the Act, 7 U.S.C. § 1a(5), defines a “commodity pool
20 operator” as any person engaged in a business that is of the nature of an investment
21 trust, syndicate, or similar form of enterprise and in connection therewith, has
22 solicited, accepted or received funds, securities or property from others for the
23 purpose of trading in any commodity for future delivery on or subject to the rules
24 of any contract market or derivatives transaction execution facility.

25 22. From at least April 2006 through the present, Driver and Axxess
26 Automation solicited, or caused to be solicited, over 100 pool participants in
27 Canada and the United States for the purpose of trading in commodity futures on
28 or subject to the rules of a contract market.

1 23. Driver is the sole owner and principal of Axxcess Automation.

2 24. Driver is in sole control over Axxcess Automation's commodity futures
3 and bank accounts.

4 25. Driver falsely told or caused to be told to pool participants that he had
5 proprietary trading software that he had used to successfully trade commodity
6 futures for himself, when, in fact, his personal trading track record was
7 unsuccessful.

8 26. Driver promised participants that he could obtain profitable returns of
9 10-20% per month trading commodity futures on their behalf.

10 27. Driver falsely or misleadingly told or caused to be told to prospective
11 Axxcess Automation pool participants that by using his futures trading software he
12 was able to obtain profits in seven or eight out of ten trades, when, in fact, his
13 personal track record trading futures was predominantly unprofitable.

14 28. The funds that Driver and Axxcess Automation received from
15 participants were pooled into bank accounts in the name of Axxcess Automation.
16 Driver told or caused to be told to participants that their funds would be pooled to
17 trade commodity futures.

18 29. Driver falsely told or caused to be told to pool participants that he
19 would use all of their funds to trade commodity futures on their behalf when, in
20 fact, he only used a portion of the pool funds to trade futures.

21 30. Several pool participants were recruited by Driver to solicit others and
22 to be point people in communicating with other pool participants.

23 31. The point people then solicited their friends and family to invest with
24 Axxcess Automation and Driver. The information they provided their friends and
25 family about Axxcess Automation and the investment came directly or indirectly
26 from Driver.

1 32. Some of the point people who solicited their friends and family
2 received commissions from Driver and/or Axxess Automation. In some cases,
3 these commissions greatly exceeded their principal investment.

4 33. Over 100 people invested with Axxess Automation. At least 15 of the
5 Axxess Automation investors were from the United States.

6 34. Driver and Axxess Automation obtained at least \$13.5 million from
7 pool participants.

8 35. Initially, Driver deposited pool participants' funds in a d/b/a bank
9 account at M&T Bank in Niagara Falls, New York in the name of Axxess
10 Automation. Driver has been using this account for his fraudulent scheme from at
11 least April 2006 through the present. Driver listed Niagara Falls, New York as the
12 mailing address for his d/b/a account at M&T Bank.

13 36. In October 2007, Driver organized Axxess Automation LLC in
14 Nevada as a limited liability company.

15 37. From at least December 2007 through the present, Driver has been
16 depositing pool participants' funds in an Axxess Automation account at Citibank in
17 Las Vegas, Nevada. When Driver opened the Citibank account in the name of
18 Axxess Automation, he listed its mailing address as Mission Viejo, California.

19 38. Driver also accepted pool participant funds in bank accounts in his
20 own name at HSBC Bank, M&T Bank, and in one instance, his Citibank account in
21 Canada.

22 39. Driver used at least \$3 million of the pool participants' funds to trade
23 commodity futures in accounts at three separate registered futures commission
24 merchants ("FCMs"). FCMs are individuals, associations, partnerships,
25 corporations, and trusts that solicit or accept orders for the purchase or sale of any
26 commodity for future delivery on or subject to the rules of any exchange and that
27 accept payment from or extend credit to those whose orders are accepted. Driver
28 mostly traded S&P 500 e-Mini futures contracts on the Chicago Mercantile

1 Exchange's ("CME") Globex electronic trading platform (hereinafter "CME
2 Globex").

3 40. From at least February 2006 through May 2008, Driver controlled a
4 futures trading account in his own name at Transact Futures ("Transact"), a
5 registered FCM.

6 41. Driver used pool participant funds to trade futures in his account at
7 Transact. From at least February 2006 through May 2008, Driver deposited
8 approximately \$2.7 million of pool participants' funds in his Transact account and
9 lost over \$2.3 million trading S&P 500 e-Mini futures on CME Globex. Driver
10 never had a profitable month in his Transact account.

11 42. Driver wired pool funds from the Axxess Automation bank accounts
12 to his personal futures trading account at Transact. Driver falsely represented to
13 Transact that all of the funds he was sending from the Axxess Automation bank
14 accounts were his own personal funds. When Transact demanded that Driver
15 produce documentation verifying that all funds in Axxess Automation were solely
16 his personal funds, Driver closed his account at Transact in May 2008.

17 43. From at least August 2007 through March 2009, Driver controlled a
18 futures trading account in his own name at Dorman Trading LLC ("Dorman
19 Trading"), a registered FCM, which was used to trade commodity futures on behalf
20 of the Axxess Automation pool participants. Driver deposited approximately
21 \$640,000 of pool funds in his Dorman Trading account and lost approximately
22 \$629,000 trading commodity futures. Driver never had a profitable month in his
23 Dorman Trading account. Once again, Driver almost exclusively traded S&P 500
24 e-Mini futures on CME's Globex.

25 44. In March 2009, Driver opened a futures trading account at Advantage
26 Futures LLC, a registered FCM, in his own name using approximately \$50,000 of
27 pool funds.
28

1 45. During the Relevant Period, Driver sent, or caused others to send,
2 false periodic account statements to the Axxess Automation pool participants.
3 These periodic account statements falsely stated that pool participants were
4 receiving profitable returns of 10to 20% per month. In fact, Driver had
5 unprofitable futures trading results nearly every month he was trading during the
6 Relevant Period.

7 46. In addition, Driver sent, or caused to be sent, statements to Axxess
8 Automation pool participants that reported large account balances in their
9 accounts. For example, for the period ending February 2009, Driver sent
10 statements to one group of Axxess Automation pool participants which showed
11 their cumulative accounts to be worth approximately \$9,647,700. These reports
12 were false because as of the end of February 2009, Axxess Automation only had
13 approximately \$63,000 in all of its bank and trading accounts.

14 47. The aforementioned account balance statements were also false in that
15 they showed consistently profitable returns nearly every week that the investor was
16 a participant in the Axxess Automation pool. In fact, the vast majority of Driver's
17 futures trading was consistently unprofitable.

18 48. On or about October 3, 2008, Driver sent at least one pool participant
19 a false trading account statement from Dorman Trading purporting to show over
20 \$34 million as of August 29, 2008 in a Dorman Trading account in Driver's name.
21 This document was false. In fact, as of August 29, 2008, Driver's actual balance at
22 his Dorman Trading account was less than \$11,000.

23 49. Moreover, Driver and Axxess Automation failed to disclose to pool
24 participants that only a portion of their funds were actually being used to trade
25 futures.

26 50. Driver used some pool participants' funds to pay purported profits and
27 commissions to other pool participants and point people, respectively, in a manner
28 typical of a Ponzi scheme.

1 51. In fact, the purported profits that Driver sent to pool participants were
2 not actual profits but money obtained from other pool participants.

3 52. Driver misappropriated some of the pool's funds. For example, in or
4 about 2007 and 2008, Driver gambled at Las Vegas casinos and withdrew pool
5 funds at one or more of these casinos.

6 53. Some pool participants decided to increase their participation on the
7 basis of alleged profits reported to those participants by Driver and Axxess
8 Automation.

9 54. Despite the fact that Driver and Axxess Automation combined had
10 over 100 pool participants and used the mails or instrumentalities of interstate
11 commerce in their CPO business, they never registered as a CPO with the
12 Commission, nor did they ever obtain an exemption from CPO registration with
13 the Commission.

14 55. On or about April 15, 2009, the CFTC subpoenaed documents from
15 Driver related to Axxess Automation, returnable on April 23, 2009.

16 56. On or about April 28, 2009, counsel for Driver informed the CFTC by
17 letter that Driver "will be unable to produce true and correct records evidencing
18 actual trading activity and corresponding financial records, all of which are
19 encompassed by the subpoena."

20 **B. Axxess Fund Management**

21 57. In June 2008, Driver applied to register Axxess Fund Management as
22 a CPO and to list himself as its principal, and to register himself as an AP of
23 Axxess Fund Management.

24 58. Axxess Fund Management's registration as a CPO became effective
25 on July 25, 2008.

26 59. Driver's registration as an AP became effective on September 3, 2008.

27 60. Driver is the sole owner and principal of Axxess Fund Management.
28

1 61. After Driver registered Axxess Fund Management as a CPO, he began
2 to solicit the Axxess Automation pool participants to transfer their accounts to
3 Axxess Fund LP, a commodity pool operated by Axxess Fund Management.

4 62. At least 90% of the unregistered Axxess Automation pool participants
5 signed subscription agreements to join the Axxess Fund LP commodity pool.

6 63. Driver told, or caused to be told to, prospective pool participants that
7 they could consider their account balances in Axxess Automation, which were
8 false, in calculating their net worth to meet the minimum net worth requirements
9 for the Axxess Fund LP commodity pool.

10 64. In soliciting pool participants for the Axxess Fund LP pool, Driver and
11 Axxess Fund Management failed to disclose that Driver consistently lost money
12 trading futures.

13 65. In soliciting pool participants for the Axxess Fund LP pool, Driver and
14 Axxess Fund Management failed to disclose that profits reported to participants in
15 the Axxess Automation pool were false.

16 66. Driver sent, or caused to be sent, to prospective Axxess Fund LP pool
17 participants an email, dated January 20, 2009, in which they were told there were
18 only 100 spots in the pool and those spots would be filling up soon. In this email,
19 prospective pool participants were encouraged to act immediately and complete the
20 subscription agreement by January 30, 2009. Prospective pool participants were
21 also told that "time is of the essence to give yourself the best possible opportunity
22 to secure your spot in the Axxess Fund."

23 67. On or about March 5, 2009, the Commission served a document
24 request on Axxess Fund Management requesting books and records relating to the
25 pool and the CPO to be produced to the Commission by March 12, 2009. Axxess
26 Fund Management failed to produce all requested books and records, such as the
27 investor subscription agreements.
28

1 68. On or about April 9, 2009, the Commission requested from Axxess
2 Fund Management by April 15, 2009, a list of all persons who received offering
3 documents for Axxess Fund LP. Axxess Fund Management never responded to the
4 Commission's request for this list.

5 **V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

6 **Count I**

7 *Violations of Sections 4b(a)(2)(i)-(iii) of the Act, and Sections 4b(a)(1)(A)-(C)*
8 *of the Act as amended by the CRA (Fraud and Misrepresentation)*

9 69. The allegations set forth in paragraphs 1 through 69 are re-alleged and
10 incorporated herein by reference.

11 70. Sections 4b(a)(2)(i) through (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-
12 (iii), make it unlawful for any person to cheat or defraud or attempt to cheat or
13 defraud; willfully make or cause to be made to such other person any false report
14 or statement thereof, or willfully to enter or cause to be entered for such other
15 reports any false record thereof; or willfully deceive or attempt to deceive by any
16 means whatsoever other persons in or in connection with orders to make, or the
17 making of, contracts of sale of commodities, for future delivery, made, or to be
18 made, for or on behalf of such other persons where such contracts for future
19 delivery were or may have been used for (a) hedging any transaction in interstate
20 commerce in such commodity, or the produce or byproducts thereof, or
21 (b) determining the price basis of any transaction in interstate commerce in such
22 commodity, or (c) delivering any such commodity sold, shipped or received in
23 interstate commerce for the fulfillment thereof.

24 71. Sections 4b(a)(1)(A) through (C) of the Act as amended by the CRA,
25 to be codified at 7 U.S.C. §§ 6b(a)(1)(A)-(C), make it unlawful for any person, in
26 or in connection with any order to make, or the making of, any contract of sale of
27 any commodity in interstate commerce or for future delivery that is made, or to be
28 made, on or subject to the rules of a designated contract market, for or on behalf of

1 any other person – (A) to cheat or defraud or attempt to cheat or defraud the other
2 person; (B) willfully to make or cause to be made to the other person any false
3 report or statement or willfully to enter or cause to be entered for the other person
4 any false record; or (C) willfully to deceive or attempt to deceive the other person
5 by any means whatsoever in regard to any order or contract or the disposition or
6 execution of any order or contract, or in regard to any act of agency performed,
7 with respect to any order or contract for the other person.

8 72. As set forth above, in or in connection with futures contracts, made, or
9 to be made, for or on behalf of other persons, Defendants cheated or defrauded or
10 attempted to cheat or defraud clients or prospective pool participants, willfully
11 made or caused to be made false reports, and willfully deceived or attempted to
12 deceive clients or prospective clients by, among other things, soliciting funds from
13 investors for the purpose of trading commodity futures by misrepresenting the
14 profit potential in trading futures using Driver's proprietary trading software and
15 failing to disclose that Driver had a losing track record with respect to trading
16 futures.

17 73. In addition, as set forth above, Defendants sent or caused to be sent to
18 pool participants false reports claiming large profits when, in fact, Defendants had
19 lost money trading commodity futures and misappropriated pool participants'
20 funds.

21 74. Driver sent at least one pool participant a false account statement from
22 Dorman Trading purporting to show over \$34 million in Driver's account, when in
23 fact, Driver had less than \$11,000 in that account.

24 75. Defendants engaged in the acts and practices described above
25 knowingly or with reckless disregard for the truth.

26 76. By this conduct before June 18, 2008, Defendants violated Sections
27 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii), and with respect to acts on
28

1 or after June 18, 2008, Sections 4b(a)(1)(A)-(C) of the Act as amended by the
2 CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C).

3 77. Each misrepresentation or omission of a material fact, including but
4 not limited to those specifically alleged herein, is alleged as a separate and distinct
5 violation of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii), with
6 respect to acts before June 18, 2008, and with respect to acts on or after June 18,
7 2008, Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified
8 at 7 U.S.C. § 6b(a)(1)(A)-(C).

9 78. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and
10 Regulation 1.2, 17 C.F.R. § 1.2, Axxess Automation and Axxess Fund
11 Management are liable for Driver's violations of the Act in that Driver acted within
12 the scope of his employment or office with Axxess Automation and Axxess Fund
13 Management.

14 79. During the Relevant Period, Driver controlled Axxess Automation and
15 Axxess Fund Management, directly or indirectly, and did not act in good faith or
16 knowingly induced, directly or indirectly, Axxess Automation's and Axxess Fund
17 Management's acts constituting the violations alleged in this Count. Therefore,
18 pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Driver is liable for Axxess
19 Automation's and Axxess Fund Management's violations of Sections 4b(a)(2)(i)-
20 (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii), with respect to acts before June 18,
21 2008, and with respect to acts on or after June 18, 2008, Sections 4b(a)(1)(A)-(C)
22 of the Act as amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C).

23 **Count II**

24 *Violations of Sections 4o(1)(A) and (B) of the Act (Fraud by CPO and AP of* 25 *CPO)*

26 80. The allegations set forth in paragraphs 1 through 80 are re-alleged and
27 incorporated herein by reference.

28

1 81. During the Relevant Period, Defendants Driver, Axxess Automation,
2 and Axxess Fund Management acted as CPOs, and Driver also acted as an AP of
3 both Axxess Automation and Axxess Fund Management, and have used the mails
4 or other means of instrumentality of interstate commerce directly or indirectly a) to
5 employ a scheme or artifice to defraud pool participants, or b) engaged in
6 transactions, practices or courses of business which operated as a fraud or deceit
7 upon pool participants, all in violation of Sections 4o(1)(A) and (B) of the Act, 7
8 U.S.C. § 6o(1)(A) and (B).

9 82. Each scheme or artifice to defraud and each transaction, practice or
10 course of business which operated as a fraud or deceit, including but not limited to
11 those specifically alleged herein, is alleged as a separate and distinct violation of
12 Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B).

13 83. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and
14 Regulation 1.2, 17 C.F.R. § 1.2, Axxess Automation and Axxess Fund
15 Management are liable for Driver's violations of the Act in that Driver acted within
16 the scope of his employment or office with Axxess Automation and Axxess Fund
17 Management.

18 84. During the Relevant Period, Driver controlled Axxess Automation and
19 Axxess Fund Management, directly or indirectly, and did not act in good faith or
20 knowingly induced, directly or indirectly, Axxess Automation's and Axxess Fund
21 Management's acts constituting the violations alleged in this Count. Therefore,
22 pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Driver is liable for Axxess
23 Automation's and Axxess Fund Management's violations of Sections 4o(1)(A) and
24 (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B).

25 **Count III**

26 *Violations of Section 4m(1) of the Act (Failure to Register as a CPO)*

27 85. The allegations set forth in paragraphs 1 through 85 are re-alleged and
28 incorporated herein by reference.

1 86. During the Relevant Period, Driver and Axxess Automation engaged
2 in a business that was of the nature of an investment trust, syndicate, or similar
3 form of enterprise, and, in connection therewith, solicited, accepted, or received
4 from others, funds, securities, or property, either directly or indirectly or through
5 capital contributions, the sale of stock or other forms of securities, or otherwise, for
6 the purpose of trading a commodity for future delivery on or subject to the rules of
7 any contract market or derivatives transaction execution facility, thus making them
8 commodity pool operators as defined by Section 1a(5) of the Act, 7 U.S.C. § 1a(5).

9 87. During the Relevant Period, Driver and Axxess Automation were not
10 exempt from registration as a CPO under Regulation 4.13, 17 C.F.R. § 4.13.

11 88. During the Relevant Period, Driver and Axxess Automation each
12 made use of the mails or any means or instrumentality of interstate commerce in
13 connection with its business as a CPO, while failing to register with the
14 Commission as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

15 89. During the Relevant Period, Driver controlled Axxess Automation,
16 directly or indirectly, and did not act in good faith or knowingly induced, directly
17 or indirectly, Axxess Automation's acts constituting the violations alleged in this
18 Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Driver
19 is liable for Axxess Automation's violations of Section 4m(1) of the Act, 7 U.S.C.
20 § 6m(1).

21 **Count IV**

22 *Violations of Regulation 4.20(c) (Commingling Pool Funds)*

23 90. The allegations set forth in paragraphs 1 through 90 are re-alleged and
24 incorporated herein by reference.

25 91. Regulation 4.20(c) prohibits CPOs from commingling pool property
26 with non-pool property.

27 92. Driver and Axxess Automation each commingled pool funds with non-
28 pool property in bank accounts.

1 93. Driver and Axxess Automation each commingled pool funds with non-
2 pool property in futures trading accounts .

3 94. Axxess Fund Management accepted pool funds in the name of Axxess
4 Fund LP and commingled those funds with non-pool property in bank accounts.

5 95. During the Relevant Period, Driver, Axxess Automation and Axxess
6 Fund Management commingled pool property with non-pool property in violation
7 of Regulation 4.20(c), 17 C.F.R. § 4.20(c).

8 96. Each instance or act of commingling of pool funds with non-pool
9 property by Driver, Axxess Automation and Axxess Fund Management, including
10 but not limited to the acts alleged herein, is alleged as separate and distinct
11 violation of Regulation 4.20(c), 17 C.F.R. § 4.20(c).

12 97. During the Relevant Period, Driver controlled Axxess Automation and
13 Axxess Fund Management, directly or indirectly, and did not act in good faith or
14 knowingly induced, directly or indirectly, Axxess Automation and Axxess Fund
15 Management's acts constituting the violations alleged in this Count. Therefore,
16 pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Driver is liable for Axxess
17 Automation's and Axxess Fund Management's violations of Regulation 4.20(c), 17
18 C.F.R. § 4.20(c).

19 **Count V**

20 *Violations of Section 4n(3)(A) of the Act and Regulations 1.31(a) and 4.23*
21 *(Failure to Produce Books & Records)*

22 98. The allegations set forth in paragraphs 1 through 98 are re-alleged and
23 incorporated herein by reference.

24 99. Section 4n of the Act and Regulation 1.31(a)(1) require that every
25 registered CPO maintain books and records in such form and manner as may be
26 prescribed by the Commission. All such books and records shall be kept for a
27 period of five years and shall be readily accessible during the first two years.
28

1 Under Regulation 1.31(a)(2), a copy of such books and records shall be provided to
2 a representative of the Commission upon the representative's request.

3 100. Regulation 4.23 provides, in relevant part, that all registered CPOs
4 must make and keep, in accordance with Regulation 1.31, certain books and
5 records including, but not limited to, literature distributed to existing or prospective
6 participants in the pool and itemized records of commodity interest transactions of
7 the pool.

8 101. Since July 2008, Axxcess Fund Management has been a registered
9 CPO.

10 102. On or about March 5, 2009, the Commission served a request for
11 documents to Axxcess Fund Management returnable on March 12, 2009, but the
12 company failed to produce all of the requested books and records, such as the
13 signed subscription agreements.

14 103. On or about April 9, 2009, the Commission requested that Axxcess
15 Fund Management produce by April 15, 2009, a list of all persons who received
16 offering documents for the Axxcess Fund LP commodity pool. Axxcess Fund
17 Management failed to comply with that request.

18 104. As set forth above, Axxcess Fund Management failed to maintain
19 and/or produce books and records requested by the Commission in violation of
20 Section 4n(3)(A) of the Act, 7 U.S.C. § 6n(3)(A), and Regulations 1.31(a) and
21 4.23, 17 C.F.R. §§ 1.31(a) and 4.23.

22 105. During the Relevant Period, Driver controlled Axxcess Fund
23 Management, directly or indirectly, and did not act in good faith or knowingly
24 induced, directly or indirectly, Axxcess Fund Management's acts constituting the
25 violations alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7
26 U.S.C. § 13c(b), Driver is liable for Axxcess Fund Management's violations of
27 Section 4n(3)(A) of the Act, 7 U.S.C. § 6n(3)(A), and Regulations 1.31(a) and
28 4.23, 17 C.F.R. §§ 1.31(a) and 4.23.

1 **V. RELIEF REQUESTED**

2 **Wherefore**, the Commission respectfully requests that the Court, as
3 authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own
4 equitable powers, enter:

5 A. An order finding that Defendants violated Sections 4b(a)(2)(i)-(iii) of
6 the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), and Sections 4b(a)(1)(A)-(C) of the Act as
7 amended by the CRA, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C);

8 B. An order finding that Defendants Driver, Access Automation and
9 Axxess Fund Management violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1);

10 C. An order finding that Defendants Driver and Axxess Automation
11 violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1);

12 D. An order finding that Defendants Driver, Axxess Automation and
13 Axxess Fund Management violated Regulation 4.20(c), 17 C.F.R. § 4.20(c);

14 E. An order finding that Defendant Axxess Fund Management violated
15 Section 4n(3)(A) of the Act, 7 U.S.C. § 6n(3)(A), and Regulations 1.31(a) and
16 4.23, 17 C.F.R. §§ 1.31(a) and 4.23;

17 F. An order of preliminary and permanent injunction prohibiting
18 Defendants and any of their agents, servants, employees, assigns, attorneys, and
19 persons in active concert or participation with any Defendants, including any
20 successor thereof, from engaging, directly or indirectly, in any violation of
21 Sections 4b(a)(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7
22 U.S.C. § 6b(a)(1)(A)-(C), Section 4o(1) of the Act, 7 U.S.C. § 6o(1), and
23 Regulation 4.20(c), 17 C.F.R. § 4.20(c);

24 G. An order of preliminary and permanent injunction prohibiting
25 Defendants Driver and Axxess Automation and any of their agents, servants,
26 employees, assigns, attorneys, and persons in active concert or participation with
27 Defendants Driver and Axxess Automation, including any successor thereof, from
28

1 engaging, directly or indirectly, in any violation of Section 4m(1) of the Act, 7
2 U.S.C. §§ 6m(1);

3 H. An order of preliminary and permanent injunction prohibiting
4 Defendants Axxess Fund Management and Driver and any of their agents, servants,
5 employees, assigns, attorneys, and persons in active concert or participation with
6 Defendants Axxess Fund Management and Driver, including any successor thereof,
7 from engaging, directly or indirectly, in any violation of Section 4n(3)(A) of the
8 Act, 7 U.S.C. §§ 6n(3)(A), and Regulations 1.31(a) and 4.23, 17 C.F.R. §§ 1.31(a)
9 and 4.23;

10 I. An order of preliminary and permanent injunction prohibiting
11 Defendants and any of their agents, servants, employees, assigns, attorneys, and
12 persons in active concert or participation with any Defendants, including any
13 successor thereof, from:

- 14 1) Trading on or subject to the rules of any registered entity, as
15 that term is defined in Section 1a(29) of the Act, 7 U.S.C. §
16 1a(29);
- 17 2) Engaging in, controlling or directing the trading for any
18 commodity interest account for or on behalf of any other person
19 or entity, whether by power of attorney or otherwise;
- 20 3) Soliciting or accepting funds from any person in connection
21 with the purchase or sale of any commodity interest;
- 22 4) Applying for registration or claiming exemption from
23 registration with the Commission in any capacity, and engaging
24 in any activity requiring such registration or exemption from
25 registration with the Commission, except as provided for in
26 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9), or acting as
27 principal, agent or any other officer or employee of any person
28 registered, exempted from registration or required to be

1 registered with the Commission, except as provided for in
2 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9);

3 5) Entering into any commodity interest transactions for their own
4 personal accounts, for any account in which they have a direct
5 or indirect interest and/or having any commodity interests
6 traded on their behalf; and/or

7 6) Engaging in any business activities related to commodity
8 interest trading;

9 J. Enter an order directing each Defendant to pay a civil monetary
10 penalty in an amount provided pursuant to Section 6c(d)(1) of the Act, 7 U.S.C. §
11 13a-1 (2006), and Regulation 143.8, 17 C.F.R. § 143.8 (2008), for each violation
12 of the Act or Regulations, plus post-judgment interest;

13 K. Enter an order providing for such other and further equitable and
14 ancillary relief as this Court may deem necessary and appropriate, including but
15 not limited to restitution and disgorgement and interest thereon from the date of
16 such violations; and

17 L. Enter an order requiring Defendants to pay costs and fees as permitted
18 by 28 U.S.C. § 1920 and 2412(a)(2).

19 M. Such other and further relief as the Court deems proper.
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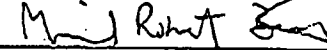
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Respectfully submitted,

Dated: May 13, 2009
New York, New York

ATTORNEYS FOR PLAINTIFF
U.S. COMMODITY FUTURES
TRADING COMMISSION

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DEMAND FOR JURY TRIAL

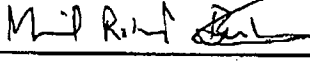
Pursuant to Local Rule 38-1, Plaintiff respectfully requests a jury trial.

Respectfully submitted,

Dated: May 13, 2009
New York, New York

ATTORNEYS FOR PLAINTIFF
U.S. COMMODITY FUTURES
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