

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 10-cv-21074 COOKE/BANDSTRA

U.S. COMMODITY FUTURES TRADING  
COMMISSION,

*Plaintiff,*

v.

CLAUDIO ALIAGA, and CMA CAPITAL  
MANAGEMENT, LLC,

*Defendants,*

and

BETTY ALIAGA and CMA GLOBAL  
INVESTMENT FUND, LLC,

*Relief Defendants.*

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**STATUTORY RESTRAINING ORDER TO FREEZE ASSETS,  
PRESERVE BOOKS AND RECORDS, ORDER FOR EXPEDITED DISCOVERY AND  
ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION**

This matter came before the Court on the United States Commodity Futures Trading Commission's ("Commission") motion for an *ex parte* statutory restraining order, an order for expedited discovery, and an order to show cause regarding a preliminary injunction. The Court, having considered the Commission's motion, memorandum of law, complaint, and other relevant materials, and all other evidence and arguments presented by the Commission, finds that:

1. This Court has jurisdiction over the parties and over the subject matter of this action pursuant to Section 6c of the Commodity Exchange Act (Act), as amended, 7 U.S.C. § 13a-1 (2006).

2. Venue lies properly within this District pursuant to Sections 6c(e) of the Act, 7 U.S.C. § 13a-1(e).

3. There is good cause to believe that Defendants, CMA Capital Management, LLC and Claudio Aliaga (“Defendants”) have engaged, are engaging, or are about to engage in acts and practices constituting violations of the Act, 7 U.S.C. § 1, *et seq.*, and Commission Regulations (“Regulations”), 17 C.F.R. § 1.1 *et seq.* (2009).

4. There is good cause to believe that Relief Defendants, CMA Global Investments and Betty Aliaga (“Relief Defendants”), received funds and/or property as a result of the Defendants’ unlawful conduct and have been unjustly enriched thereby. The Relief Defendants have no legitimate entitlement to or interest in all of the funds and/or property received as a result of the Defendants’ unlawful conduct.

5. There is 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 or Relief Defendants of assets or records unless Defendants and Relief Defendants are immediately restrained and enjoined by order of the Court.

6. Good cause exists for freezing Defendants’ and Relief Defendants’ assets and for entry of an order prohibiting Defendants and Relief Defendants from destroying records and denying agents of the Commission access to inspect and copy records.

7. Good cause exists to require an accounting to determine location and disposition of customer funds.

8. Good cause exists to order repatriation of assets controlled by Defendant to assure payment of restitution and disgorgement as authorized and for the benefit of customers.

9. Good cause exists to permit expedited discovery before the early meeting of counsel pursuant to Rule 26(d) of the Federal Rules of Civil Procedure, in order to ascertain the existence and location of assets, clarify the source of funds, and identify all pool participants and other investors.

10. 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.

### **DEFINITIONS**

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

11. 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, drives, networks, servers, 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.

12. "Assets" mean 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, credits, receivables, lines of credit, contracts including spot and futures contracts, insurance policies, and all cash, wherever located.

13. "Defendants" shall mean and refer to not only CMA Capital Management, LLC and Claudio Aliaga, but also to any d/b/a, successor, or other entity controlled by any of the named individuals.

14. "Relief Defendants" shall mean and refer to not only CMA Capital Global Investment Fund, LLC and Betty Aliaga, but also to any d/b/a, successor, or other entity controlled by any of the named parties.

## **RELIEF GRANTED**

### **I. ORDER AGAINST TRANSFER, DISSIPATION, AND DISPOSAL OF ASSETS**

**IT IS ORDERED** that:

15. Defendants, Relief Defendants, and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, who receive actual notice of this order by personal service or otherwise, are restrained and enjoined 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 assets held outside the United States, except as provided in Section III of this order, or as otherwise ordered by the Court. The assets affected by this paragraph shall include both existing assets and assets acquired after the effective date of this order.

16. Defendants and Relief 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 any or all of the Defendants and/or Relief Defendants.

### **II. 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 of Defendants and/or Relief Defendants, or has held, controlled, or maintained custody of any account or asset of Defendants and/or Relief Defendants at any time since May 1, 2006, shall:

17. Prohibit Defendants, Relief 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;

18. Deny Defendants, Relief Defendants, and all other persons identified in this order, access to any safe deposit box that is: (a) titled in the name of Defendants and/or Relief Defendants either individually or jointly; or (b) otherwise subject to access by Defendants and/or Relief Defendants;

19. Provide counsel for 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 such account or asset titled in the name, individually or jointly, of each and every Defendant and Relief Defendant, or held on behalf of, or for the benefit of each and every Defendant and/or Relief Defendant; (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, and 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 titled in the name, individually or jointly, of each and every Defendant and/or Relief or is otherwise subject to access by Defendants and/or Relief Defendants; and

20. 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, Internal Revenue Service 1099 forms, and safe deposit box logs.

**III. ACCOUNTING AND TRANSFER OF FUNDS AND DOCUMENTS**

**IT IS FURTHER ORDERED** that within ten (10) business days following the service of this order, Defendants and Relief Defendants shall:

21. Provide the Commission with a full accounting of all funds, assets, and documents inside and outside of the United States that are held by each and every Defendant and Relief Defendant, for their benefit, or under their direct or indirect control, whether jointly or singly;

22. Transfer to the territory of the United States all funds, documents, and assets located outside of the United States that are held by each and every Defendant and Relief Defendant for their benefit, or under their direct or indirect control, whether jointly or singly; and

23. Provide the Commission access to all records of each and every Defendant and Relief Defendant held by financial institutions located outside the territorial United States.

**IV. MAINTENANCE OF BUSINESS RECORDS**

**IT IS FURTHER ORDERED** that:

24. Defendants, Relief Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, and all other 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 Defendants and/or Relief Defendants.

**V. INSPECTION AND COPYING OF BOOKS AND RECORDS**

**IT IS FURTHER ORDERED** that:

25. Representatives of the Commission be immediately allowed to inspect the books, records, and other documents of Defendants, Relief Defendants and their agents, including, but not limited to, electronically stored data, hard drives, networks, servers, compact discs, tape

recordings, and computer discs, wherever they may be situated and whether they are in the person of Defendants, Relief Defendants or others, and to copy said documents, data and records, either on or off the premises; and

26. Defendants, Relief Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants and/or Relief Defendants who receive actual notice of this order by personal service or otherwise, including facsimile transmission, shall cooperate fully with the Commission to locate and provide to representatives of the Commission all books and records of Defendants and Relief Defendants, wherever such books and records may be situated.

**VI. ORDER PERMITTING EXPEDITED DISCOVERY**

**IT IS FURTHER ORDERED** that:

27. The prohibition upon discovery before the early meeting of counsel is removed pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.

28. The prohibition upon the immediate commencement of depositions is removed pursuant to Rule 30(a)(2)(C) of the Federal Rules of Civil Procedure.

29. The parties may proceed to take the oral deposition of any person upon three calendar days actual notice if the notice is served upon the parties personally or by telecopier to the party's last known business telecopier number.

30. The parties may take the deposition of any person for the purpose of discovering the nature, location, status and extent of assets of the Defendants or Relief Defendants and the location of any documents reflecting those assets.

**VII. BOND NOT REQUIRED OF PLAINTIFF**

**IT IS FURTHER ORDERED** that:

31. The Commission is an agency of the United States of America and, accordingly, need not post a bond.

**VIII. ORDER TO SHOW CAUSE**

**IT IS FURTHER ORDERED** that:

32. Defendants shall appear before this Court on May 5, 2010, at 11:00 a.m., before the Honorable Marcia G. Cooke at the United States Courthouse for the Southern District of Florida, 400 North Miami Avenue, Courtroom 11-2, Miami, Florida 33128, to show cause, if there be any, why an order for preliminary injunction should not be entered to preserve the status quo obtained by the statutory restraining order, prohibit further violations of the Act and grant other relief requested pending trial on the merits of this action.

33. Should any party wish to file a memorandum of law or other papers in opposition to Plaintiff's Motion for a Preliminary Injunction, all papers shall be filed and served on or before April 23, 2010.

**IX. SERVICE OF ORDER**

**IT IS FURTHER ORDERED** that:

34. 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 Defendants and/or Relief Defendants or that may be subject to any provision of this order, and, additionally, that Paul Hayeck, Christine Ryall, Eugene Smith, Patricia Gomersall, or other representatives of the Commission are specially appointed by the Court to effect service. Service of the summons, Complaint or other process may be affected by U.S. Marshal or Deputy U.S. Marshal, or in accordance with Fed. R. Civ. P. 4.



**X. SERVICE ON THE COMMISSION**

**IT IS FURTHER ORDERED** that:

35. Defendants and Relief Defendants shall serve all pleadings, correspondence, notices required by this Order, and other materials on the Commission by delivering a copy to Eugene Smith, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581.

**XI. ASSISTANCE OF UNITED STATES MARSHAL SERVICE**

**IT IS FURTHER ORDERED** that:

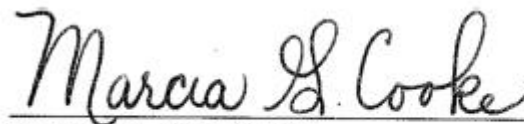
36. The United States Marshals Service is directed to assist the Commission in the service of the summons, complaint, and this statutory restraining order on the Defendants and Relief Defendants.

**XII. FORCE AND EFFECT**

**IT IS FURTHER ORDERED** that:

37. 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.

**DONE and ORDERED** in chambers, at Miami, Florida on this 9<sup>th</sup> day of April 2010.



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MARCIA G. COOKE  
United States District Judge

Copies furnished to:  
*Counsel of record*