

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

U.S. COMMODITY FUTURES  
TRADING COMMISSION  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

Plaintiff,

Civil Action No.: JFM-12-1225  
(SEALED)

v.

THE BORROWING STATION LLC  
4003 Woodrow Lane  
Bowie, MD 20715  
Prince George's County

and

SIDNEY J. CHARLES, JR.  
4003 Woodrow Lane  
Bowie, MD 20715  
Prince George's County

Defendants.

\* \* \* \* \*

~~PROPOSED~~ **EX PARTE STATUTORY RESTRAINING ORDER AND  
ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION  
AND OTHER EQUITABLE RELIEF**

This matter is before the Court on Plaintiff U.S. Commodity Futures Trading Commission's ("Commission" or "CFTC") *Ex Parte* Motion for a Statutory Restraining Order, an Order to Show Cause Regarding Preliminary Injunction, and Other Equitable Relief (the "Motion"). The Court, having considered the Motion, the memorandum filed in support thereof, and all other evidence presented by Plaintiff, and having heard the arguments of counsel, 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”), 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2)(C) of the Act, 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 (enacted June 18, 2008), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. § (2)(c)(2)(C).

2. Venue lies properly within this District pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006).

3. There is good cause to believe that The Borrowing Station, LLC (“Borrowing Station”) and Sidney J. Charles, Jr. (“Charles”) (collectively “Defendants”) have engaged, are engaging, and are about to engage in acts and practices constituting violations of the Act, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Commission Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011).

4. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for customers 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 the Court.

5. Good cause exists for the freezing of assets owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants.

6. Good cause exists for entry of an order prohibiting Defendants, their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendants, including any successor thereof, from destroying records and/or denying Commission representatives access to inspect and copy records to ensure that Commission representatives have immediate and complete access to those books and records.

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

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 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:

9. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure ("FRCP") 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.

10. "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, whether individually or jointly, directly or indirectly controlled, and wherever located, including, but not limited to: chattels, goods, instruments, equipment, fixtures, general

intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts (including, but not limited to, bank accounts and accounts at financial institutions), credits, receivables, lines of credit, contracts including spot and futures or options contracts, insurance policies, and all cash, wherever located.

11. "Defendants" means Borrowing Station, Charles, and any person insofar as he or she has acted or is acting in the capacity of an officer, agent, servant, employee, or attorney of Borrowing Station or Charles, 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 participating with Borrowing Station or Charles.

#### **RELIEF GRANTED**

##### **I. Order Against Transfer, Removal, Dissipation, and Disposal of Assets**

###### **IT IS HEREBY ORDERED that:**

12. Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, including any successor thereof, and persons in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, are immediately 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 of Defendants' assets, wherever located and whether within the custody, control, or actual or constructive possession of Defendants, including Defendants' assets held outside the United States and its territories, except as provided in Section III of this Order, or as otherwise ordered by the Court. The assets affected by this Section shall include both existing assets and assets acquired after the effective date of this Order; and

13. 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, Defendants.

## **II. Transfer of Funds and Documents**

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

14. Transfer to the territory of the United States, all of Defendants' assets (other than real property) located outside the United States and its territories; and

15. Provide the Commission, and any receiver later appointed by the Court, access to all records of Defendants held by financial institutions located within or outside the territorial United States by signing the Consent to Release of Financial Records attached to this Order.

## **III. Directive 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 or has held, controls or has controlled, or maintains or has maintained custody of any of Defendants' assets at any time since October 1, 2009, shall:

16. Prohibit Defendants, and all other persons from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of Defendants' assets, except as directed by further Order of the Court;

17. Deny Defendants, and all other persons access to any safe deposit box that is: (a) owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants, either individually or jointly; or (b) otherwise subject to access by Defendants;

18. 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 account or other asset owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants, either individually or jointly; (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 (i) owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants, either individually or jointly, or (ii) otherwise subject to access by Defendants; and

19. 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 Forms 1099, and safe deposit box logs.

#### **IV. Maintenance of Business Records**

**IT IS FURTHER ORDERED** that:

20. Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendants, including any successor thereof, and all other persons or entities who receive notice of this Order by personal service or otherwise, are immediately 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 entities

operated by Defendants, or business or personal finances of Defendants and their subsidiaries or affiliates.

**V. Inspection and Copying of Books and Records**

**IT IS FURTHER ORDERED** that:

21. Representatives of the Commission shall immediately be allowed to inspect the books, records, and other documents including, but not limited to, electronically stored information, tape recordings, and computer discs, of Defendants and their respective agents, wherever they may be situated and whether they are in the possession or control of Defendants, or others, and to copy said documents, information, data, and records, either on or off Defendants' premises; and

22. Defendants shall, within 24 hours of the service of this Order, cause to be prepared and delivered to the Commission, a detailed and complete schedule of all desktop computers, laptop computers, and/or any other electronic storage devices or mobile devices, including, without limitation, smart phones and personal digital assistants (collectively, "Computing Devices") owned and/or used by them in connection with Defendants' businesses, and, with respect to Charles, owned and/or used by him for any purpose. The schedules required by this Section shall include at a minimum the make, model, and description of each Computing Device, along with its location, the name of the person primarily assigned to use the Computing Device, and all passwords necessary to access and use the software contained on the Computing Device. The Commission shall be authorized to make an electronic, digital, or hard copy of all the data contained on the Computing Devices; and

23. Defendants shall, within 24 hours of the service of this Order, cause to be prepared and delivered to the Commission, a detailed and complete schedule of all usernames, passwords, and identification (ID) numbers for all websites, electronic mail accounts, videophone accounts, and all

accounts at any bank, financial institution, brokerage firm (including any introducing broker or futures commission merchant), or other entity operated by or to which any of the Defendants has access; and

24. Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendants, including any successor thereof, who receive actual notice of this Order by personal service or otherwise, including facsimile or other electronic transmission, shall cooperate fully with the Commission to locate and provide to representatives of the Commission all books and records of Defendants, wherever such books and records may be situated, and to locate and provide to representatives of the Commission information regarding the whereabouts of Defendants; and

25. Representatives of the Commission and any other government agency are authorized to have continuing access to inspect or copy any or all of the books, records, and other documents of Defendants, including any subsidiaries and affiliates, and their officers, agents, servants, and employees, and continuing access to inspect their assets, funds, premises, collateral, books, records, or other property, wherever located.

#### **VI. Order Barring Relief Against Defendants' Assets**

**IT IS FURTHER ORDERED** that:

26. Except by leave of this Court and until further orders of this Court, Defendants and all other persons and entities seeking relief of any kind from Defendants' assets (other than the present action by the Commission, and including, but not limited to, customers, clients, pool participants, investors, members, partners, trust beneficiaries, note holders, creditors, claimants, lessors, in law or in equity, and all persons acting on behalf of any such customer, client, pool participant, investor, member, partner, trust beneficiary, note holder, creditor, claimant, lessor, or other person, including sheriffs,

marshals, and all offices and deputies, and their respective attorneys, servants, agents and employees) are restrained, enjoined, and stayed from doing anything, directly or indirectly, to interfere with the administration of Defendants' assets (including administration by a receiver, should appointment of such prove necessary), including taking any action to establish or enforce any claim, right, or interest for, against, on behalf of, in, or in the name of Defendants, including but not limited to, the following actions:

- a. Commencing, prosecuting, litigating, or enforcing any suit, except that actions may be filed to toll any applicable statute of limitations;
- b. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, property of Defendants or any property claimed by Defendants, or attempting to foreclose, forfeit, alter, or terminate any of Defendants' interests in property, whether such acts are part of a judicial proceeding or otherwise;
- c. Using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoena, replevin, execution, or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon any property, wherever located, owned by, or in the possession of Defendants; and
- d. Doing any act or thing to interfere with the exclusive jurisdiction of this Court over the property and assets of Defendants.

**VII. Bond Not Required of Plaintiff**

**IT IS FURTHER ORDERED** that:

27. As the Commission is an agency of the United States of America and has made a proper showing under Section 6c(b), 7 U.S.C. 13a-1 (2006), this restraining order is granted without bond. Accordingly, the Commission need not post a bond.

**VIII. Order to Show Cause**

**IT IS FURTHER ORDERED** that:

28. Defendants shall appear before this Court on the 4<sup>th</sup> day of May, 2012, at 9:00, a.m., before the Honorable Alexander Williams at the United States Courthouse for the District of Maryland (Greenbelt Division) to show cause, if there be any, why an Order for Preliminary Injunction should not be granted to prohibit further violations of the Act and why the other relief requested should not be granted pending trial on the merits of this action; and

29. 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 on or before April 27, 2012. Service of all such papers and all pleadings, correspondence, or other materials on the Commission shall be by electronic mail, overnight mail (such as Federal Express or United Parcel Service), facsimile, or personal service and not by regular mail due to potential delay resulting from heightened security and decontamination procedures applicable to the Commission's regular mail.

**IX. Service**

**IT IS FURTHER ORDERED** that:

30. Copies of this Order shall be served by any means, including facsimile transmission, upon any entity or person that may have possession, custody, or control of any documents or any assets of Defendants, or that may be subject to any provision of this Order; and

31. Service of the Summons, Complaint, or other process may be effected by any Commission representative, any U.S. Marshal, deputy U.S. Marshal, or representative of the U.S. Marshal Service, or in accordance with Fed R. Civ. P. 4.

**X. Assistance of U.S. Marshals Service and Other Law Enforcement Personnel**

**IT IS FURTHER ORDERED** that:

32. The U.S. Marshals Service, as well as state and local law enforcement agencies, are authorized to accompany and assist the Commission's representatives outside and inside Defendants' residence and/or place of business, as well as secure these locations, in the service and execution of this Order and to undertake such efforts as are reasonably necessary to ensure that the Commission's representatives have an unimpeded right to inspect and copy books, records, and documents as set forth above wherever such books, records, and documents are or are believed by the Commission to be located.

**XI. Force and Effect**

**IT IS FURTHER ORDERED** that:

33. This Order shall remain in full force and effect until further order of this Court and this Court retains jurisdiction of this matter for all purposes.

SO ORDERED, on this 23<sup>rd</sup> day of April, 2012, at Greenbelt, Maryland.

*Alexander Williams, Jr.*  
UNITED STATES DISTRICT JUDGE

**CONSENT TO RELEASE OF FINANCIAL RECORDS**

I, \_\_\_\_\_, a resident of \_\_\_\_\_, do hereby direct any bank, trust company, or other financial company, as well as any of its officers, employees, and agents, at which I have or had a bank account or other financial account of any kind operated under my name or any other name (including any corporation or other entity) for which I am or was authorized to draw on the account, to disclose all information and deliver copies of all documents of every nature in the bank's, trust company's, or other financial company's possession or control which relate to said bank or other financial accounts to any attorney or investigator of the United States Commodity Futures Trading Commission, and to give evidence relevant thereto, in the matter of *United States Commodity Futures Trading Commission v. The Borrowing Station, LLC, et al.*, Case No. \_\_\_\_\_, now pending before the United States District Court for the District of Maryland, and this shall be irrevocable authority for so doing. This direction is intended to apply to not only the laws of the United States, but also to the law 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 shall apply to any of the bank accounts or other financial accounts for which I may be a relevant principal.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature