

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:)
Gordon A. Driver and Axxess Fund Management LLC,) CFTC Docket No. SD 12-10
Registrants.)

NOTICE OF INTENT TO REVOKE THE REGISTRATIONS
OF GORDON A. DRIVER AND AXCESS FUND MANAGEMENT LLC

I.

The U.S. Commodity Futures Trading Commission (“Commission”) has received information from its staff that tends to show, and the Commission’s Division of Enforcement (“Division”) alleges and is prepared to prove, that:

1. Access Fund Management LLC (“Access Fund”) is a Nevada limited liability company with its Commission-registered address at 2251 N. Rampart Blvd, Ste. #265, Las Vegas, NV 89128.

2. Access Fund has been registered with the Commission as a Commodity Pool Operator (“CPO”) since July 2008, pursuant to Section 4m of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6m.

3. Gordon A. Driver (“Driver”) has been registered as an Associated Person (“AP”) of Access Fund since September 2008. Driver is the sole principal of Axxess Fund, owns a 10% or more financial interest in Axxess Fund and has the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of Axxess Fund which are subject to regulation by the Commission. Driver is a resident of Las Vegas, Nevada.

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4. On May 14, 2009, the Commission filed a federal civil injunctive action against Driver, Axxess Fund and Axxess Automation LLC (“Axxess Automation”), another Nevada limited liability company owned by Driver. *See CFTC v. Gordon A. Driver, et al.*, Case No. 09-cv-0578 ODW (C.D. Cal. filed May 14, 2009) (hereinafter “*CFTC v. Driver*”) charging defendants, *inter alia*, with violating the anti-fraud provisions of the Commodity Exchange Act, as amended (the “Act”), 7 U.S.C. §§ 1 *et seq.* Axxess Automation has never been registered with the Commission.

5. On July 5, 2012, in *CFTC v. Driver* the United States District Court for the Central District of California entered an Order Granting Plaintiff’s unopposed motion for summary judgment (“SJ Order”) and on July 12, 2012, the Court entered a Final Judgment and Order of Permanent Injunction, Civil Monetary Penalty and other Equitable Relief (“Final Judgment”).¹ The SJ Order and Final Judgment contained findings of fact and conclusions of law, which found, *inter alia*, that defendants fraudulently solicited over \$14.3 million from over 100 pool participants, made materially false and misleading statements or omissions of facts to pool participants, and misappropriated approximately \$10.6 million for Ponzi payments and personal expenses. The Final Judgment found that by engaging in this fraud, Driver, Axxess Fund, and Axxess Automation violated Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii), for acts prior to June 18, 2008, and Section 4b(a)(1)(A)-(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 (“CRA”)), § 13102, 122 Stat. 1651 (effective June 18, 2008), to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), for acts on or after June 18, 2008. The Final Judgment also

¹ On August 10, 2012, Driver filed a notice of appeal with the Ninth Circuit Court of Appeals, D.C. No. 8:09-cv-00578-ODW-RZ, Central District of California, Santa Ana. Driver did not request a stay of the District Court’s Final Judgment, entered on July 12, 2012, nor did the District Court impose a stay.

imposed against all defendants a permanent injunction from further violations of the Act, restitution of over \$9.5 million, permanent trading and registration bans, and a civil monetary penalty of \$31.8 million.

6. The Final Judgment also found that Driver and Axxess Fund committed fraud in violation of Section 4o(1)(A)-(B) of the Act, 7 U.S.C. § 6o(1)(A)-(B), that Driver and Axxess Automation acted as unregistered CPOs in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1), that defendants commingled pool funds with non-pool property in violation of Regulation 4.20(c), 17 C.F.R. § 4.20(c), and that Axxess Fund failed to timely comply with a Commission document request in violation of Section 4n(3)(A) of the Act, 7 U.S.C. § 6n(3)(A), and Regulations 1.31(a) and 4.23, 17 C.F.R. § 1.31(a) and 4.23.

7. The SJ Order also found that Driver was the principal and sole controlling person of Axxess Fund and Axxess Automation and knowingly induced their violations of the Act. Moreover, in the National Futures Association's ("NFA") registration records, Driver is listed as the principal and more than 10% owner of Axxess Fund.

8. The Final Judgment, in relevant part, permanently restrains and enjoins Driver, Axxess Fund, and Axxess Automation from directly or indirectly committing fraud and misappropriation in violation of Sections 4b(a)(1)(A)-(C) and 4o(1)(A)-(B) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C) and 6o(1)(A)-(B), and imposed other sanctions described in ¶ 5 above.

9. Pursuant to Section 8a(2)(C) of the Act, 7 U.S.C. § 12a(2)(C), the Commission may revoke the registration of any person who has been permanently enjoined by order of a court of competent jurisdiction, from certain enumerated activities, including but not limited to (i) acting as a futures commission merchant, introducing broker, floor broker, floor trader, CTA, CPO, or an AP of any registrant under the Act, or (ii) engaging in or continuing any activity

involving fraud or any transaction in or advice concerning contracts of sale of a commodity for future delivery or concerning matters subject to Commission regulation under Section 4c or 19 of the Act, 7 U.S.C. §§ 6c or 23.

10. Furthermore, pursuant to Section 8a(2)(E) of the Act, 7 U.S.C. § 12a(2)(E), the Commission may revoke the registration of any person who has been found, in a proceeding brought by the Commission, to have violated the Act by committing fraud or misappropriation within ten years preceding the filing of the registration application or any time thereafter.

11. Furthermore, pursuant to Section 8a(2)(H) of the Act, 7 U.S.C. § 12a(2)(H), the Commission may revoke the registration of any person if revocation of the registration of any principal of such person is warranted pursuant to Section 8a(2) of the Act, 7 U.S.C. § 12a(2). Section 8a(2)(H) of the Act further provides that “principal” includes a general partner or a partnership, or a person who owns more than 10% of the voting shares of a corporation. Pursuant to Regulation 3.1(a)(1), 17 C.F.R. § 3.1(a)(1) (2012), if an entity is organized as a limited liability company, “principal” includes any direct, president, chief executive officer, manager, managing member or members vested with the management authority for the entity, and any person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the entity’s activities that are subject to regulation by the Commission.

12. The facts set forth above constitute a valid basis for the Commission to revoke Access Fund’s registration as a CPO and Driver’s registration as an AP.

II.

13. Pursuant to Regulation 3.60(a), 17 C.F.R. § 3.60(a) (2012), Driver and Access Fund are hereby notified that a public proceeding shall be conducted in accordance with the

provisions of Regulation 3.60, 17 C.F.R. § 3.60 (2012), and Part 10 of the Regulations, 17 C.F.R. § 10.1 *et seq.*, on the following questions:

(a) Whether Driver is subject to statutory disqualification from registration under Section 8a(2)(C) and (E) of the Act as set forth in Section I above;

(b) Whether Axxcess Fund is subject to statutory disqualification from registration under Section 8a(2)(C), (E) and (H) as set forth in Section I above ; and

(c) If the answers to questions (a) and (b) are affirmative, then whether the registrations of Axxcess Fund as a CPO and Driver as an AP should be revoked.

14. Such proceeding shall be held before an Administrative Law Judge or a Presiding Officer in accordance with Regulations 3.60 and 10.8, 17 C.F.R. §§ 3.60 and 10.8 (2012), and all post-hearing procedures shall be conducted pursuant to Regulations 3.60(i)-(j), 17 C.F.R. § 3.60(i)-(j) (2012).

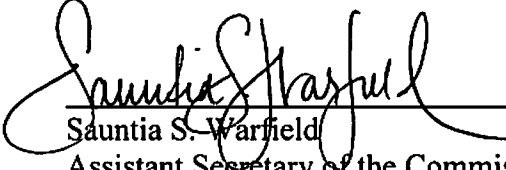
15. In accordance with the provisions of Regulation 3.60(a)(3), 17 C.F.R. § 3.60(a)(3) (2012), Driver and Axxcess Fund are entitled to file responses challenging the evidentiary bases of the statutory disqualification or show cause why, notwithstanding the accuracy of the allegations, their registrations should not be revoked. Such responses must be filed with the Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and served upon W. Derek Shakabpa, Senior Trial Attorney, Division of Enforcement, Eastern Regional Office, 140 Broadway, 19th Floor, New York, NY 10005, within thirty (30) days after the date of service of this Notice upon Driver and Axxcess Fund, in accordance with the provisions of Regulation 3.60(b), 17 C.F.R. § 3.60(b) (2012). If Driver and Axxcess Fund fail to file a timely response to this Notice, the allegations set forth herein shall be deemed to be true, and the Administrative

Law Judge or the Presiding Officer may issue an Order of Default in accordance with the provisions of Regulation 3.60(g), 17 C.F.R. § 3.60(g) (2012).

III.

16. The Proceedings Clerk shall serve this Notice of Intent to Revoke the Registrations of Gordon A. Driver and Axxcess Fund Management, LLC in accordance with Regulations 3.50, 17 C.F.R. §§ 3.50 (2012), or by any other means permitted under the Act or Regulations thereunder.

By the Commission.


Sauntia S. Warfield
Assistant Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 25, 2012