

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION**

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| |) | |
| U.S. COMMODITY FUTURES |) | |
| TRADING COMMISSION, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CASE NO. _____ |
| |) | |
| SEAN NATHAN HEALY, |) | |
| |) | |
| Defendant, |) | |
| |) | |
| and |) | |
| |) | |
| SHALESE RANIA HEALY and |) | |
| SAND DOLLAR INVESTING |) | |
| PARTNERS, LLC, |) | |
| |) | |
| Relief Defendants. |) | |
| |) | |

**PLAINTIFF’S *EX PARTE* EMERGENCY MOTION FOR STATUTORY
RESTRAINING ORDER, EXPEDITED DISCOVERY, PRELIMINARY
INJUNCTION, AND OTHER EQUITABLE RELIEF**

Pursuant to Section 6c of the Commodity Exchange Act (Act), 7 U.S.C. § 13a-1 (2006), plaintiff U.S. Commodity Futures Trading Commission (CFTC) respectfully applies to the Court for immediate issuance of an *ex Parte* emergency motion for a statutory restraining order, without bond, and an order to show cause regarding preliminary injunction. In addition, after providing Defendant Sean

Nathan Healy (Sean Healy) notice and an opportunity to respond, the CFTC requests that a preliminary injunction be entered against him, as more fully described herein. In support of this motion, the CFTC respectfully refers to Court to the CFTC's memorandum in support and exhibits filed contemporaneously therewith.

As explained in the CFTC's memorandum of law, since at least May 2008, Sean Healy has engaged in a fraudulent scheme to solicit funds from Alfred L. Madeira (Madeira), as well as from friends, acquaintances, and business associates of Madeira and Madeira's attorney, Thomas Ahrens (Ahrens) (collectively, the Madeira Investors) to invest in, *inter alia*, commodity futures contracts (futures) and commodity options contracts (options). Upon information and belief, approximately 44 investors have invested collectively at least \$14 million in Defendant's fraudulent scheme. While operating the fraudulent scheme, Defendant, among other things, (1) misappropriated funds received from Madeira and the Madeira investors for the purpose of trading futures and options; (2) solicited investments through fraudulent, material misrepresentations and omissions, including, among other things, misrepresentations about Sean Healy's past and current trading performance and trading activity; (3) made or caused to be made false reports or statements to Madeira and the Madeira investors who invested money with Sean Healy to trade futures and options. During the time that

Defendant was receiving money from Madeira, he and his wife purchased numerous exotic vehicles, jewelry, a lease on a luxury suite at Bank Atlantic Arena (where the Miami Heat play basketball), a \$2.4 million home, and approximately \$2 million in home furnishings and home improvements, including a \$500,000 home movie theater.

By misappropriating investor funds, making false oral statements to Madeira and either directly or indirectly to the Madeira investors regarding, among other things, trading activity and profits supposedly generated from that trading, issuing false written statements to Madeira, proposed Defendant cheated, defrauded, and deceived and attempted to cheat, defraud, and deceive Madeira and the Madeira Investors, in violation of Sections 4b(a)(2)(i)-(iii) and 4c(b) of the Act; 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), §§ 13101-13204, 122 Stat. 1651 (effective June 18, 2008), to be codified at 7 U.S.C. §§ 1, *et seq.*; and CFTC Regulation (Regulation) 33.10(a)-(c).

Issuing the proposed *ex parte* statutory restraining order will protect the Court's ability to grant full and effective relief by preserving the status quo pending the preliminary injunction hearing in this matter.

I.

STATUTORY RESTRAINING ORDER

Pursuant to Section 6c of the Act, the CFTC seeks a statutory restraining order, which:

1. Appoints Melanie E. Damian as Receiver,¹ with the full powers of an equity receiver, including, but not limited to, full power over all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers, and other property belonging to, being managed by, or in the possession of or control of Defendants or any of their subsidiaries and affiliates. The Receiver shall be the agent of this Court in carrying out the receivership:

2. Authorizes, empowers, and directs the Receiver:

A. to have access to and, in the Receiver's discretion, to collect and take custody, control, possession, and charge of all funds, assets, collateral, premises (whether owned, leased, occupied or otherwise controlled), choses in action, books, records, papers,

¹ The Securities and Exchange Commission (SEC), which is simultaneously filing an action in this Court against the same Defendant and same Relief Defendants, has contacted several potential receivers in the Miami, Florida area. After reviewing materials submitted by the potential receivers, the CFTC and the SEC both recommend appointing Ms. Damian as receiver in their respective actions. If the Court so desires, counsel for the CFTC and the SEC are available to discuss this recommendation with the Court, at its convenience.

and other real or personal property, wherever located, of or managed by Defendant or Relief Defendants, and their subsidiaries and affiliates.

- B. to have control of, and to be added as the sole authorized signatory for, all accounts of the entities in receivership, including all accounts at any bank, title company, escrow agent, financial institution or brokerage firm (including any futures commission merchant) which has possession, custody or control of any assets or funds of Defendant or Relief Defendants, and their subsidiaries and affiliates, or which maintains accounts over which Defendant or Relief Defendants, and their subsidiaries and affiliates, and/or any of their employees or agents have signatory authority;
- C. to conduct such investigation and discovery as may be necessary to locate and account for all of the assets of or managed by Defendant or Relief Defendants, and their subsidiaries and affiliates, and to engage and employ attorneys, accountants, and other persons to assist in such investigation and discovery;

- D. to take such action as is necessary and appropriate to preserve and take control of and to prevent the dissipation, concealment, or disposition of any assets of or managed by Defendant or Relief Defendants, and their subsidiaries and affiliates;
- E. to make, as soon as practicable, to this Court, the CFTC, and the SEC an accounting of the assets and financial condition of Defendant and Relief Defendants and to file the accounting with the Court and deliver copies thereof to all parties;
- F. to make such payments and disbursements from the funds and assets taken into custody, control, and possession or thereafter received by the Receiver and to incur, or authorize the making of, such agreements as may be necessary and advisable in discharging the Receiver's duties;
- G. to initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal,² or foreign court necessary to preserve or increase the

² This provision would include, but not be limited to, the Receiver's ability to intercede, at the Receiver's discretion, in *Madeira v. Healy*, Case No. 09-60403-CIV-Martinez/Brown (S.D. Fla.), complaint filed on March 16, 2009; *In re Madeira*, Case No. 1:09-bk-02819-MDF (Bankr. M.D. Penn.), Chapter 11 petition filed on April 14, 2009; and *In re Ahrens*, Case No. 09-1:09-bk-02935-MDF (Bankr. M.D. Penn.), Chapter 7 petition filed on April 20, 2009.

assets of the Defendants or Relief Defendants or to carry out the Receiver's duties pursuant to the Court's Order;

- H. to employ attorneys, accountants, and others to investigate and, where appropriate, to institute, pursue, and prosecute all claims and causes of action of whatever kind and nature which may now or hereafter exist as a result of the activities of present or past employees or agents of Defendant or Relief Defendants, and their subsidiaries and affiliates; and
- I. to have access to and monitor all mail, electronic mail, and videophone of the entities in receivership in order to review such mail and electronic mail which the Receiver deems relates to their business and the discharging of the Receiver's duties;

3. Requires Defendant and Relief Defendants, including any subsidiaries and affiliates, and their officers, agents, servants, employees, and attorneys, within 24 hours of the service of the Court's order, to prepare and deliver to the Receiver, a detailed and complete schedule of all passwords and identification (ID) numbers for all websites, electronic mail accounts, videophone accounts, and all accounts at any bank, financial institution, or brokerage firm (including any introducing broker or futures commission merchant) operated by or to which Defendant or Relief Defendants have access;

4. Requires Defendant and Relief Defendants, including any subsidiaries and affiliates, and their officers, agents, servants, employees, and attorneys, within 24 hours of the service of this Order, to prepare and deliver to the Receiver, a detailed and complete schedule of all desktop computers, laptop computers, and/or personal digital assistants (PDA) owned and/or used by them and state whether such device is/was used by them in connection with their business, futures and/or options trading, or other investments. The schedules required by this section shall include at a minimum the make, model, and description of each computer and/or PDA, along with its location, the name of the person primarily assigned to use computer and/or PDA, and all passwords necessary to access and use the software contained on the computer and/or PDA. The Receiver shall be authorized to make an electronic, digital, or hard copy of all of the data contained on the computer(s) and/or PDA(s);

5. Requires Defendant and Relief Defendants, including any subsidiaries and affiliates, and their officers, agents, servants, employees, and attorneys, and any other persons who are in custody, possession, or control of any assets, funds, collateral, books, records, papers, or other property of or managed by any entities in receivership, to give access and control of such property to the Receiver and cooperate with and assist the Receiver and take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver or the Receiver's

attorneys, accountants, employees, or agents, having access or gaining control of such property, or in the conduct of the Receiver's duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the assets, funds, collateral, books, records, premises, and choses in action described above;

6. Requires that no officer, agent, servant, employee, or attorney of Defendant or Relief Defendants take any action or purport to take any action, in the name of or on behalf of Sand Dollar, without the written consent of the Receiver or order of this Court;

7. Requires Defendant and Relief Defendants, and their subsidiaries and affiliates to pay the costs, fees, and expenses of the Receiver incurred in connection with the performance of the Receiver's duties described in the order, including the costs and expenses of those persons who may be engaged or employed by the Receiver to assist the Receiver in carrying out the Receiver's duties and obligations. All applications for costs, fees, and expenses for services rendered in connection with the receivership, other than routine and necessary business expenses in conducting the receivership, such as salaries, rent, and any and all other reasonable operating expenses, shall be made by application setting forth in reasonable detail the nature of the services and shall be heard by the Court;

8. Provides that no bond shall be required in connection with the appointment of the Receiver. Except for an act of gross negligence, the Receiver shall not be liable for any loss or damage incurred by any of Defendant, Relief Defendants, their officers, agents, servants, employees, and attorneys or any other person, by reason of any act performed or omitted to be performed by the Receiver in connection with the discharge of the Receiver's duties and responsibilities;

9. Provides that representatives of the CFTC, the Receiver, and the SEC are authorized to have continuing access to inspect or copy any or all of the corporate books and records and other documents of Defendant and Relief Defendants, including any subsidiaries and affiliates, and their officers, agents, servants, employees, and attorneys, and continuing access to inspect their assets, funds, premises, collateral, books, records, or other property, wherever located;

10. Provides that, absent express permission and leave by this Court, during the pendency of this receivership, all clients, investors, trust beneficiaries, note holders, creditors, claimants, lessors, and all other persons or entities seeking relief of any kind from Defendant's Assets and Relief Defendants' Assets (other than the present actions by the CFTC and the SEC), in law or in equity, and all persons acting on behalf of any such investor, trust beneficiary, note holder, creditor, claimant, lessor, consultant group, or other person, including sheriffs, marshals, and all officers and deputies, and their respective attorneys, servants,

agents and employees, are, until further order of this Court, are restrained and enjoined from doing anything, directly or indirectly, to interfere with the Receiver's performance of the Receiver's duties and the administration of Defendant's Assets and Relief Defendants' Assets. Accordingly, all such persons would be enjoined from engaging in any self-help, including set-offs, and from filing or prosecuting any actions or proceedings which involve the Receiver or which affect Defendant's Assets or Relief Defendant's Assets, specifically including any proceeding initiated pursuant to the United States Bankruptcy Code, except with prior permission of this Court, and that any such actions that are so authorized shall be filed in this Court. The provisions of this paragraph, however, shall apply prospectively only; thus, they do not apply to restrain or enjoin ongoing legal actions, including, but not limited to, *Madeira v. Healy*, Case No. 09-60403-CIV-Martinez/Brown (S.D. Fla.), complaint filed on March 16, 2009; *In re Madeira*, Case No. 1:09-bk-02819-MDF (Bankr. M.D. Penn.), Chapter 11 petition filed on April 14, 2009; and *In re Ahrens*, Case No. 09-1:09-bk-02935-MDF (Bankr. M.D. Penn.), Chapter 7 petition filed on April 20, 2009. Nevertheless, consistent with this Order, the Receiver may intercede in these or other legal actions as the Receiver believes is necessary and appropriate;

11. Authorizes service of the statutory restraining order by any means, including facsimile and electronic mail transmission, upon any entity or person that

may have possession, custody, or control of any documents or assets of Defendant or Relief Defendants, or that may be subject to any provision of the statutory restraining order;

12. Authorizes service of the Summons, Complaint, or other process by any CFTC representative, any SEC representative, the Receiver or any of the Receiver's representatives, any U.S. Marshal or deputy U.S. Marshal, or in accordance with FRCP 4;

13. Freezes the assets of Defendant and Relief Defendant and restrains and enjoins Defendant and Relief Defendants, and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, including any successor thereof, who receive actual notice of this Order by personal service or otherwise, from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any of Defendant's Assets or Relief Defendants' Assets, wherever located, including Defendant's Assets and Relief Defendants' Assets held outside the United States, except as provided in Section V of the proposed Order, or as otherwise ordered by the Court. Defendant's Assets affected by this provision shall include both existing Defendant's Assets and Defendant's Assets acquired after the effective date of this Order. Relief Defendants' Assets affected by this provision shall

include only Relief Defendants' Assets existing as of the effective date of this Order;

14. Prohibits Defendant, Relief Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them, including any successor thereof, who receive actual notice of this Order by personal service or otherwise, from accessing any safe deposit box that is:

(a) owned, controlled, managed, or held by, on behalf of, or for the benefit of Defendants or Relief Defendants, either individually or jointly; or (b) otherwise subject to access by Defendant or Relief Defendants;

15. Prohibits Defendant and Relief Defendants from directly or indirectly opening or causing to be opened any safe deposit boxes titled in the name of, or subject to, access by Defendant or Relief Defendants;

16. Requires any financial or brokerage institution, business entity, or person that holds, controls, or maintains custody of any account or asset of, or has held, controlled, or maintained custody of any account for any Defendant or Relief Defendant, at any time since January 1, 2008 to prohibit Defendant, Relief Defendants, and all other persons (except the Receiver and the Receiver's representatives) from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of

Defendant's or Relief Defendants' Assets, except as directed by further Order of the Court;

17. Denies Defendant, Relief 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 Defendant or Relief Defendants;

18. Requires any financial or brokerage institution, business entity, or person that holds, controls, or maintains custody of any account or asset of, or has held, controlled, or maintained custody of any account for any Defendant or Relief Defendant, at any time since January 1, 2008 to provide counsel for the CFTC and the Receiver, 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 Defendant or Relief 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 owned controlled, managed, or held by, on behalf of, or for

the benefit of Defendant or Relief Defendants, either individually or jointly, or is otherwise subject to access by Defendant or Relief Defendants; and, upon request by the CFTC or the Receiver, promptly provide the CFTC and the Receiver 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 Form 1099s, and safe deposit box logs;

19. Requires Defendant and Relief Defendants to provide the CFTC and Receiver with a full accounting of all Defendant's Assets and Relief Defendants' Assets, inside and outside of the United States, from January 1, 2008 to the date of this Order;

20. Requires Defendants and Relief Defendants to transfer to a financial institution in the territory of the United States all of Defendant's Assets and Relief Defendants' Assets (other than real property) located outside the United States and provide notice to the CFTC of such transfer;

21. Provides the CFTC and Receiver access to all records of Defendant and Relief Defendants held by financial institutions located within or outside the territorial United States by signing a Consent to Release of Financial Records provided by the CFTC;

22. Prohibits Defendant, Relief Defendants, and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendant or Relief Defendants, including any successor thereof, and all other persons or entities who receive notice of this Order by personal service or otherwise 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 Defendant or Relief Defendants and their subsidiaries or affiliates;

23. Allows representatives of the CFTC and the Receiver immediate access to inspect the books, records, and other documents of Defendant, Relief Defendants, and their agents, including, but not limited to, electronically stored information, tape recordings, and computer discs, wherever they may be situated and whether they are in the person of Defendant, Relief Defendants, or others, and to copy said documents, information and records, either on or off Defendant's or Relief Defendants' premises;

24. Requires Defendant, Relief Defendants, their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendant or Relief Defendants, including any successor thereof, who receive actual notice of this Order by personal service or otherwise, including facsimile or other electronic transmission, to cooperate fully with the CFTC and Receiver to

locate and provide to representatives of the CFTC and Receiver all books and records of Defendant and Relief Defendants, wherever such books and records may be situated;

25. Allows the CFTC and the Receiver to conduct expedited discovery, removing the prohibition upon discovery before the early meeting of counsel pursuant to FRCP 26(f), in accordance with FRCP 26(d), and to take depositions of Defendant, Relief Defendants, and non-parties subject to two calendar days notice pursuant to FRCP 30(a) and 45—that notice may be given personally, by facsimile, or by electronic mail. Further, more than ten depositions may be taken and, if necessary, any deposition may last more than seven hours. This expedited discovery will allow the CFTC and the Receiver to determine the full extent of Defendant’s alleged wrongdoing (including, but not limited to, the possible involvement of others), locate Defendant’s other customers, identify customers’ funds, and other of Defendant’s Assets and Relief Defendants’ Assets, and clarify the sources of various funds; and

26. Allows the CFTC, an agency of the United States of America, to forego posting a bond.

II.

ORDER TO SHOW CAUSE

The CFTC also requests that the Court issue an order to show cause why a preliminary injunction should not be granted against Sean Healy to prohibit further violations of the Act; the Act, as amended by the CRA; and Regulations and for such other relief as the Court deems necessary and appropriate under the circumstances.

III.

MOTION FOR PRELIMINARY INJUNCTION

After Defendant has had an opportunity to respond to allegations, the CFTC requests, for reasons stated herein and in the accompanying memorandum in support, that a preliminary injunction, pursuant to Section 6c of the Act, be entered against Defendant that prohibits further violations of the Act; the Act, as amended by the CRA; and the Regulations and awards such other relief as the Court deems necessary and appropriate under the circumstances.

WHEREFORE, plaintiff CFTC, at this time, respectfully requests that the Court issue an *ex parte* statutory restraining order in the form proposed by plaintiff and enter the requested show cause setting a hearing on plaintiff's motion for a preliminary injunction.

Respectfully submitted by,

/s/ Charles D. Marvine

Charles D. Marvine

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ATTORNEYS FOR PLAINTIFF

Dated: July 13, 2009