

FILED

2009 MAY 14 AM 10:04
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

1 JOHN M. McCOY III, Cal. Bar No. 166244
Email: mccoymj@sec.gov
2 SUSAN F. HANNAN, Cal. Bar No. 97604
Email: hannans@sec.gov

3 Attorneys for Plaintiff
4 Securities and Exchange Commission
5 Rosalind R. Tyson, Regional Director
6 Andrew G. Petillon, Associate Regional Director
7 5670 Wilshire Boulevard, 11th Floor
Los Angeles, California 90036
Telephone: (323) 965-3998
Facsimile: (323) 965-3908

8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

CV09-03410

ODW

(RZX)

Case No.

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 vs.

15 GORDON A. DRIVER and ACCESS
AUTOMATION, LLC,

16 Defendants.

COMPLAINT FOR VIOLATIONS
OF THE FEDERAL SECURITIES
LAWS

17
18
19 Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

20 JURISDICTION AND VENUE

21 I. This Court has jurisdiction over this action pursuant to Sections 20(b),
22 20(d)(1) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C.
23 §§ 77t(b), 77t(d)(1), and 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27
24 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1),
25 78u(d)(3)(A), 78u(e), and 78aa. The Defendants have, directly or indirectly, made
26 use of the means or instrumentalities of interstate commerce, of the mails, or of the
27 facilities of a national securities exchange in connection with the transactions, acts,
28 practices and courses of business alleged in this Complaint.

1 documents, an order expediting discovery, and accountings, as well as preliminary
2 and permanent injunctions, disgorgement with prejudgment interest, and civil
3 penalties.

4 **DEFENDANTS**

5 7. **Gordon A. Driver**, age 51, resides in Las Vegas, Nevada and
6 Hamilton, Ontario, Canada. From 1998 to 2007, Driver resided in Southern
7 California, where he claimed he began to develop his software program. Driver is
8 Axxess' manager and a signatory on the bank accounts into which investors wire
9 their funds. Driver also has sole discretionary authority over the futures accounts
10 through which he traded investor funds. He is not registered with the Commission
11 in any capacity. On April 15, 2009, the Ontario Securities Commission issued a
12 temporary cease trade order against Driver, Axxess, and others for unlicensed
13 securities trading. That order has been extended to mid-October 2009.

14 8. **Axxess Automation, LLC** has been registered as a Nevada limited
15 liability company since October 17, 2007. Driver operates Axxess out of his
16 residences in Las Vegas, Nevada, and Hamilton, Ontario, Canada. In effect,
17 Axxess is Driver's alter ego. Axxess has never been registered with the
18 Commission in any capacity, nor has it registered an offering of securities under
19 the Securities Act or a class of securities under the Exchange Act.

20 **THE FRAUDULENT SCHEME**

21 **A. The Axxess Offering**

22 9. From approximately February 2006 to the present, Driver and Axxess
23 raised at least \$14.1 million from over 100 investors in the United States and
24 Canada through the sale of interests in Axxess. At least 12 investors reside and
25 were solicited in this judicial district.

26 10. Driver told prospective investors that he pooled their funds and used
27 the money to trade futures, specifically e-Mini S&P 500 futures, using a
28 proprietary software program that he claimed he developed. Driver offered

1 prospective investors a weekly return of 1% to 5%, which he claimed equaled just
2 25% of his total weekly trading profits.

3 11. Defendants did not provide prospective investors with any offering
4 materials, though they initially provided some investors with a one-page "Letter of
5 Agreement." The agreement, to be signed by the investor and Driver, stated that
6 Axxess would use the investor's funds "for the purpose of trading e-Mini S&P 500
7 futures" and that Axxess would pay the investor his principal "plus 25% of all
8 returns generated by the investment" no later than 100 days after the agreement is
9 signed. The agreement also stated that the parties acknowledged the "volatile
10 nature of investments" and that Axxess would not be liable for losses related to
11 "his [sic] investment decisions." Driver assured investors that his computer
12 program had built-in safeguards to manage risk, he never had a trading loss for
13 more than a day, and he never had a weekly or monthly trading loss.

14 12. Driver solicited friends, neighbors, and business acquaintances through
15 informal meetings and casual conversation. Driver's scheme flourished in mid-2007
16 when he made inroads with leaders of an Ontario, Canada-based Christian television
17 ministry, where he had worked in the late 1970s. Close relatives of the television
18 ministry's founder invested in Axxess and became finders or "point persons" for
19 Axxess. Driver recruited other investors to do the same.

20 13. The finders solicited new investors, mostly friends and family, to invest
21 in Axxess. Driver periodically provided information regarding the weekly trading
22 profits to the finders, who reported the returns to investors in their group. Driver
23 offered to pay the finders a 5% commission on his 75% share of the trading profits.

24 14. Driver pooled investor funds in several banks accounts. Driver
25 directed prospective investors to wire their funds directly into his personal bank
26 accounts or to an account in Axxess' name. In late February 2009, Driver prepared
27 and sent one investor group (48 investors) an annual statement on Axxess
28 letterhead showing each investor's purported deposits, withdrawals, and principal,

1 weekly returns, and account balance as of December 31, 2008. The Axxess annual
2 statements for the 48 investors show total account balances of approximately \$9.6
3 million. In fact, at the end of December, Driver only had about \$276,162 in all of
4 his accounts: \$265,388 in his bank accounts and \$10,774 in one trading account.

5 15. Driver did not usually provide prospective or existing investors third
6 party confirmations or account statements reflecting the trading profits or amounts
7 invested. But in early October 2008, Driver sent at least one finder a fabricated
8 trading account statement, which falsely stated that the account's ending balance
9 was approximately \$34.7 million as of August 28, 2008, when in fact, it was only
10 about \$10,774. The finder continued to raise money from investors after receiving
11 the bogus trading account statement from Driver.

12 **B. Fraudulent Misrepresentations**

13 16. While Driver and Axxess represented that they used investor funds to
14 trade futures and generate substantial profits from which they could pay investors a
15 1% to 5% weekly return, Driver in fact did limited trading and in some months,
16 conducted no trading whatsoever. Only \$3.7 million was transferred into Driver's
17 accounts to trade e-Mini S&P 500 futures. And rather than making a substantial
18 profit from such trading as represented to investors orally and through periodic
19 account statements, from approximately February 2006 to the present, Driver and
20 Axxess had a cumulative net loss of \$3.55 million.

21 17. While Driver claimed that the returns paid to investors represented
22 trading profits, Driver in fact operated Axxess as a Ponzi scheme. Although Driver
23 engaged in limited trading, he lost nearly 95% of the funds invested. But Driver
24 nevertheless paid out about \$10.7 million to investors. The only way that he was
25 able to pay returns to existing investors was by using funds from new investments.

26 18. Driver and Axxess also misappropriated investor funds. Of the at
27 least \$14.1 million in investor funds deposited into Driver's and Axxess' bank
28 accounts since February 2006, Driver used over \$1.1 million to pay personal

1 expenses, including over \$469,000 in cash withdrawals. Driver had no other
2 source of income during this period except his purported trading profits.

3 **C. Driver's Ongoing Offering**

4 19. Driver is currently soliciting investors for his new hedge fund, Axxess
5 Fund, LP, through a private placement memorandum he distributes to existing
6 investors and new prospects. Driver tells existing investors that they can simply
7 roll over their purported current account balances into the new fund, which requires
8 a minimum investment of \$250,000. Although the fund is supposedly open to only
9 100 accredited investors, Driver tells existing investors that he has the discretion to
10 allow some non-accredited investors into the fund. Most of the existing Axxess
11 investors and a few new prospects have submitted subscription agreements for the
12 new fund. Driver tells existing Axxess investors that he intends to operate the new
13 fund using his same proprietary software program purportedly used by Axxess.

14 **FIRST CLAIM FOR RELIEF**

15 **Unregistered Offer and Sale of Securities**

16 **Violations of Sections 5(a) and 5(c) of the Securities Act**

17 **(Against All Defendants)**

18 20. The Commission realleges and incorporates by reference paragraphs 1
19 through 19 above.

20 21. The Defendants, and each of them, by engaging in the conduct
21 described above, directly or indirectly, made use of means or instrumentalities of
22 transportation or communication in interstate commerce or of the mails, to offer to
23 sell or to sell securities, or to carry or cause such securities to be carried through
24 the mails or in interstate commerce for the purpose of sale or delivery after sale.

25 22. No registration statement has been filed with the Commission or has
26 been in effect with respect to the offering alleged herein.

27 23. By engaging in the conduct described above, the Defendants violated,
28 and unless restrained and enjoined will continue to violate, Sections 5(a) and 5(c)

1 of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

2 **SECOND CLAIM FOR RELIEF**

3 **Unregistered Broker-Dealer**

4 **Violations of Section 15(a) of the Exchange Act**

5 **(Against Driver)**

6 24. The Commission realleges and incorporates by reference paragraphs 1
7 through 19 above.

8 25. Driver, by engaging in the conduct described above, directly or
9 indirectly, made use of the mails and other means or instrumentalities of interstate
10 commerce to effect transactions in securities, without being registered as a broker
11 or dealer pursuant to Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b), in
12 violation of Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a).

13 26. By engaging in the conduct described above, Driver violated, and
14 unless restrained and enjoined will continue to violate, Section 15(a) of the
15 Exchange Act, 15 U.S.C. § 78o(a).

16 **THIRD CLAIM FOR RELIEF**

17 **Fraud in the Offer or Sale of Securities**

18 **Violations of Section 17(a) of the Securities Act**

19 **(Against All Defendants)**

20 27. The Commission realleges and incorporates by reference paragraphs 1
21 through 19 above.

22 28. The Defendants, and each of them, by engaging in the conduct
23 described above, in the offer or sale of securities by the use of means or
24 instruments of transportation or communication in interstate commerce or by use
25 of the mails directly or indirectly:

- 26 a. with scienter, employed devices, schemes, or artifices to
27 defraud;
28 b. obtained money or property by means of untrue statements of a

1 material fact or by omitting to state a material fact necessary in
2 order to make the statements made, in light of the
3 circumstances under which they were made, not misleading; or
4 c. engaged in transactions, practices, or courses of business which
5 operated or would operate as a fraud or deceit upon the
6 purchaser.

7 29. By engaging in the conduct described above, the Defendants violated,
8 and unless restrained and enjoined will continue to violate, Section 17(a) of the
9 Securities Act, 15 U.S.C. § 77q(a).

10 **FOURTH CLAIM FOR RELIEF**

11 **Fraud in Connection with the Purchase or Sale of Securities**
12 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**
13 **(Against All Defendants)**

14 30. The Commission realleges and incorporates by reference paragraphs 1
15 through 19 above.

16 31. The Defendants, and each of them, by engaging in the conduct
17 described above, directly or indirectly, in connection with the purchase or sale of a
18 security, by the use of means or instrumentalities of interstate commerce, of the
19 mails, or of the facilities of a national securities exchange, with scienter:

- 20 a. employed devices, schemes, or artifices to defraud;
- 21 b. made untrue statements of a material fact or omitted to state a
22 material fact necessary in order to make the statements made, in
23 the light of the circumstances under which they were made, not
24 misleading; or
- 25 c. engaged in acts, practices, or courses of business which
26 operated or would operate as a fraud or deceit upon other
27 persons.

28 32. By engaging in the conduct described above, the Defendants violated,

1 and unless restrained and enjoined will continue to violate, Section 10(b) of the
2 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §
3 240.10b-5.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, the Commission respectfully requests that the Court:

6 **I.**

7 Issue findings of fact and conclusions of law that the Defendants committed
8 the alleged violations.

9 **II.**

10 Issue judgments, in forms consistent with Fed. R. Civ. P. 65(d), temporarily,
11 preliminarily and permanently enjoining the Defendants and their officers, agents,
12 servants, employees, and attorneys, and those persons in active concert or
13 participation with any of them, who receive actual notice of the judgment by
14 personal service or otherwise, and each of them, from violating Section 17(a) of
15 the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act, 15
16 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

17 **III.**

18 Issue, in a form consistent with Fed. R. Civ. P. 65, a temporary restraining
19 order and a preliminary injunction freezing the assets of each of the Defendants
20 and any entity affiliated with any of them, prohibiting each of the Defendants from
21 destroying documents, granting expedited discovery, and requiring accountings
22 from each of the Defendants.

23 **IV.**

24 Order each of the Defendants to disgorge all ill-gotten gains from their
25 illegal conduct, together with prejudgment interest thereon.

26 **V.**

27 Order each of the Defendants to pay civil penalties under Section 20(d) of
28 the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act,

1 15 U.S.C. § 78u(d)(3).

2 **VI.**

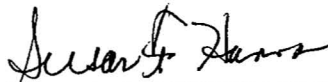
3 Retain jurisdiction of this action in accordance with the principles of equity
4 and the Federal Rules of Civil Procedure in order to implement and carry out the
5 terms of all orders and decrees that may be entered, or to entertain any suitable
6 application or motion for additional relief within the jurisdiction of this Court.

7 **VII.**

8 Grant such other and further relief as this Court may determine to be just and
9 necessary.

10
11 DATED: May 14, 2009

Respectfully submitted,

12
13 

14 _____
15 John M. McCoy III
16 Susan F. Hannan
17 Attorneys for Plaintiff
18 Securities and Exchange Commission
19
20
21
22
23
24
25
26
27
28