

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

U.S. Commodity Futures Trading Commission,	)	
	)	
Plaintiff,	)	No. 09 <sup>SC</sup> <del>CV</del> 3332 MOD/OTK
	)	
v.	)	
Trevor Cook d/b/a Crown Forex, LLC,	)	
Patrick Kiley d/b/a Crown Forex, LLC,	)	
Universal Brokerage FX and Universal Brokerage FX Diversified, Oxford Global Partners, LLC, Oxford Global Advisors, LLC, Universal Brokerage FX Advisors, LLC f/k/a UBS Diversified FX Advisors, LLC, Universal Brokerage FX Growth, L.P. f/k/a UBS Diversified FX Growth L.P., Universal Brokerage FX Management, LLC f/k/a UBS Diversified FX Management, LLC and UBS Diversified Growth, LLC,	)	
Defendants.	)	

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AND  
FOR PENALTIES UNDER THE COMMODITY EXCHANGE ACT

I. SUMMARY

1. For several years, dating back to at least 2006 and continuing until at least July 2009, defendants Trevor Cook d/b/a Crown Forex, LLC ("Cook") and Patrick Kiley d/b/a Crown Forex, LLC, Universal Brokerage FX and Universal Brokerage FX Diversified ("Kiley"), individually and through at least six entities that they managed, Oxford Global Partners, LLC ("OGP"), Oxford Global Advisors, LLC ("OGA"), Universal Brokerage FX Advisors, LLC fka UBS Diversified FX Advisors, LLC

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("UBFXA"), Universal Brokerage FX Growth, L.P. fka UBS Diversified FX Growth, L.P. ("UBFXG"), Universal Brokerage FX Management, LLC, fka UBS Diversified FX Management, LLC ("UBFXM"), and UBS Diversified Growth, LLC ("UBSDG"), (collectively, "Defendants") have engaged in a massive investment fraud, soliciting and accepting over \$190 million from over 900 customers in the United States for the purported purpose of trading off-exchange foreign currency ("forex") contracts in so-called managed, segregated accounts that they claimed they placed with a Swiss entity, Crown Forex, SA, in which Cook has been a majority owner since at least December 2008. Among other things, the Defendants misrepresented investor profits, falsely claiming to have earned average annual profits of over 10 percent since 2003 with no risk of loss. After accepting customer funds, the Defendants misappropriated some of the funds rather than send all of the funds to Crown Forex, SA in Switzerland. The Defendants then lied to their investors by distributing or posting false account statements that falsely showed that the investors' accounts were earning profits. The Defendants solicited and accepted investor funds until at least July 2009 for the purported purpose of placing the funds in managed segregated accounts with Crown Forex, SA, even though the Swiss Financial Market Supervisory Authority ("FINMA") placed Crown Forex, SA into receivership in December 2008 and into bankruptcy liquidation on May 19, 2009.

2. The plaintiff, Commodity Futures Trading Commission ("CFTC" or "Commission"), has jurisdiction over the Defendants' conduct occurring on or after June 18, 2008, during which time the Defendants cheated and defrauded at least 556 investors by fraudulently soliciting, accepting and misappropriating at least \$84 million

dollars. By virtue of this conduct and the further conduct described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of Sections 4b(a)(2)(A)-(C) of the Commodity Exchange Act (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 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 6b(a)(2)(A)-(C).

3. Cook is a controlling person of OGP, OGA, UBFXA, UBFXG, UBFXM and UBSDG, and did not act in good faith or knowingly induced the acts constituting the companies’ violations of the Act, and therefore is liable for their violations of the Act pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

4. Kiley is a controlling person of UBFXA, UBFXG, UBFXM and UBSDG, and did not act in good faith or knowingly induced the acts constituting the companies’ violations of the Act, and therefore is liable for their violations of the Act pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

5. OGP, OGA, UBFXA, UBFXG, UBFXM and UBSDG are liable for the acts, omissions and failures of Cook and Kiley acting within the scope of their office with OGP, OGA, UBFXA, UBFXG, UBFXM and UBSDG pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006).

6. Accordingly, the CFTC brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, to enjoin Defendants’ unlawful acts and practices and to compel their compliance with the Act. In addition, the CFTC seeks restitution, disgorgement, civil

monetary penalties and such other statutory or equitable relief as this Court may deem necessary or appropriate.

7. Unless restrained and enjoined by this Court, Defendants are likely to engage in the acts and practices alleged in this Complaint or in similar acts and practices, as described more fully below.

## **II. JURISDICTION AND VENUE**

8. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), and Section 2(c)(2)(B) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. § 2(c)(2)(B) and (C). Section 6c(a) of the Act authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder. Section 2(c)(2)(B) and (C) of the Act, as amended by the CRA, provides the Commission with jurisdiction with respect to the transactions at issue.

9. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because the Defendants reside in this jurisdiction and the acts and practices in violation of the Order have occurred within this District.

## **III. THE PARTIES**

10. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing

the Act, 7 U.S.C. §§ 1 *et seq.*, and the regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2009).

11. Defendant Oxford Global Partners, LLC is a Minnesota limited liability company formed in September 2008 by Cook and the wife of a former OGP employee. Its main offices are located at 1900 LaSalle Avenue in Minneapolis, Minnesota, in a building also known as the Van Dusen mansion. OGP has never been registered with the Commission in any capacity.

12. Defendant Oxford Global Advisors, LLC is a Delaware limited liability company formed in April 2008 with its main offices also located at the Van Dusen mansion. OGA has never been registered with the Commission in any capacity.

13. Defendant Universal Brokerage FX Advisors, LLC fka UBS Diversified FX Advisors, LLC is a Minnesota limited liability company formed in November 2007 with its main offices at 12644 Tiffany Court, Burnsville, Minnesota. UBFXA has never been registered with the Commission in any capacity.

14. Defendant Universal Brokerage FX Growth, L.P., fka UBS Diversified FX Growth, L.P. is a Minnesota limited partnership formed in November 2007 with its main offices at 12644 Tiffany Court, Burnsville, Minnesota. UBFXG has never been registered with the Commission in any capacity.

15. Defendant Universal Brokerage FX Management, LLC fka UBS Diversified FX Management, LLC is a Minnesota limited liability company formed in November 2007 with its main offices at 12644 Tiffany Court, Burnsville, Minnesota. UBFXM has never been registered with the Commission in any capacity.

16. Defendant UBS Diversified Growth, LLC is a Minnesota limited liability formed in October 2004 with its main offices at 12644 Tiffany Court, Burnsville, Minnesota. UBSDG has never been registered with the Commission in any capacity.

17. Defendant Trevor Cook resides in Apple Valley, Minnesota. He owns, operates, and is managing partner of OGA and OGP, and identifies himself as the president and chief investment director of OGP. Cook has also identified himself as a partner of UBFXA, UBFXG, UBFXM and UBSDG. Cook was intermittently registered with the Commission as an associated person (“AP”) of certain other registered persons from January 2001 through November 2007, but has not been registered with the Commission in any capacity since then. In 2001, Cook was subject to a registration denial proceeding brought by the National Futures Association (“NFA”) for conduct reflecting lack of honesty, and in 2005 Cook was sanctioned by the NFA in connection with a disciplinary action charging him with making misleading statements about the profit potential of futures and options trading, failing to uphold high standards of commercial honor and just and equitable principles of trade, failing to give appropriate risk disclosures to a customer and inflating the customer's annual income and net worth, and converting customer funds and failing to transmit orders through the firm’s carrying broker.

18. Defendant Patrick Kiley resides in Burnsville, Minnesota. He owns, operates and manages UBFXA, UBFXG, UBFXM and UBSDG. He identifies himself to the public as the manager and senior partner of UBFXA, UBFXG, UBFXM and UBSDG. He has never been registered with the Commission in any capacity.

#### IV. RELATED ENTITY

19. Crown Forex, SA was a Swiss forex trading entity formed in June 2005. It maintains offices in Bassecourt, Switzerland. Cook has owned 51% of Crown Forex, SA since at least December 2008. Cook, Kiley, OGA, OGP, UBFXA, UBFXG, UBFXM and UBSDG and their agents and representatives have solicited and accepted funds from the public for the purpose of managing forex trading accounts at Crown Forex, SA since at least December 2008. FINMA has been investigating Crown Forex, SA for violation of Swiss banking laws since December 2008 when it handed down a “super provisional decision” against Crown Forex, SA appointing two Swiss attorneys as “investigation agents” to run the company. FINMA forced Crown Forex, SA into bankruptcy liquidation on May 19, 2009 for violations of the Swiss Banking Act including failure to properly account for customer funds and failure to obtain the required Swiss banking license. Crown Forex, SA is currently a defunct company, and, according to FINMA, does not have any assets. Crown Forex, SA has never been registered with the Commission in any capacity.

20. Cook and Kiley have done business under the name Crown Forex, LLC from at least November 2008 to the present. Cook and Kiley established at least one U.S. domiciled bank account in the name of Crown Forex, LLC where they caused U.S. customer funds to be deposited. Crown Forex, LLC is not a validly registered business entity in any state and has never been registered with the Commission in any capacity. Crown Forex, LLC does not have any relationship to Crown Forex, SA. Their only connection is Cook’s ownership interest in both entities.

## V. DEFENDANTS' FRAUD

### A. Fraudulent Customer Solicitations

21. Since at least June 18, 2008, Cook, Kiley, and other agents of OGP, OGA, UBFXA, UBFXG, UBFXM and UBSDG, have solicited the public to invest in their “foreign currency arbitrage” trading program in which they represented that customer funds would be placed in segregated accounts with Crown Forex, SA that Defendants would manage for the purpose of trading forex.

22. Cook, Kiley, and other agents of OGP, OGA, UBFXA, UBFXG, UBFXM and UBSDG, represented to customers both verbally and in writing that the forex arbitrage program they offered used “fixed swap rate arbitrage utilizing the highest spread between the G5 currency pairs.” All currency fluctuation risks were to be directly hedged through a “no swap Shariah compliant bank or liquidity provider” that did not charge interest for religious reasons. The strategy was also described as a “fully hedged carry trade.” Because the currency positions allegedly were to be fully hedged, Defendants represented that “all market risk was eliminated.”

23. Defendants made the following misrepresentations of material fact to customers verbally and/or in writing through brochures they provided to customers and through at least three internet websites:

- a. Defendants' customers make average annual profit returns of approximately 10.4% through “leverage interest bearing instruments” and utilization of Islamic Shariah compliant banks, with no losing months since 2003.

- b. “All positions are 100% liquid on a 24-hour basis . . .Customer funds are always 100% liquid – 24 hours a day and may be withdrawn at any time.”
- c. “The strategy offers fully protected principal with the opportunity for increased yields.”
- d. “Customer funds are held in segregated accounts – they are not commingled with other clients’ or company funds.”
- e. That OGP has over \$4 billion under management.

24. None of the foregoing representations was true, and Defendants knew that the representations were false or recklessly disregarded the truth while making these representations. Among other things, Defendants did not achieve the purported actual profits that they represented to customers and potential customers had been made or would be made. In addition: most of Defendants’ customers have been unable to withdraw any of their funds; and customer funds were commingled in the same account, and were not deposited in segregated accounts in the customers’ names. Further, on information and belief, the Defendants did not use any Shariah compliant banks or financial institutions.

25. From at least June 2008 through July 2009, Kiley solicited the public to invest in the Defendants’ forex arbitrage trading program through a radio show that he hosted from his home in Burnsville, Minnesota titled “follow the money, truth seekers,” which is aimed at Christian audiences and broadcast on hundreds of radio stations throughout the country. In his radio show, Kiley represented that investor funds were held in private segregated accounts, investments were fully liquid and could be redeemed

any time, and invested funds earned double digit returns. Once again, Kiley knew his representations were false or recklessly disregarded the truth while making these representations. Kiley encouraged investors to call and invest via a 1-800 telephone number that was repeated frequently throughout his broadcasts. At least four customers invested with Defendants as a result of listening to Kiley's representations on his radio show.

26. From June 2008 through July 2009, Cook solicited customers via telephone and in person at his office in the Van Dusen mansion, likewise telling them that they would earn 10-12% annually with no risk of loss through Defendants' forex arbitrage trading program. Cook and Kiley also provided at least six investors with a brochure titled "Capital Protected Fixed Income Enhancement," which stated that "because the transaction is done on the same interbank market, the positions offset, eliminating all market risk." Cook was at least partially responsible for the content of the brochure. At least eight customers invested with Defendants as a result of Cook's representations and the representations in the brochure.

27. Defendants provided customers with account statements via mail and OGP's website at [www.oxfordglobalpartners.com](http://www.oxfordglobalpartners.com). The statements consistently reflected that customers were earning 10-12% per year with no losses when, in fact, on information and belief, Defendants did not achieve the purported profits reflected in these customer account statements. The profits reflected in these statements induced at least three customers to make additional investments with Defendants.

**B. Misappropriation of Customer Funds and Misrepresentations About The Use of Customer Funds**

28. Cook, Kiley and other agents of OGP, OGA, UBFXA, UBFXG, UBFXM and UBSDG instructed most U.S. customers to send their funds to a bank account entitled “Crown Forex” and numbered XXXXXX1705.

29. Defendants intentionally or recklessly failed to disclose to customers that the Crown Forex account XXXXXX1705 in which they deposited their investment funds was not a bank account controlled by Crown Forex, SA. Rather, the account was titled in the name of Crown Forex, LLC with Associated Bank of St. Louis Park, Minnesota. The signatories on the account were Kiley and an assistant. Bank statements for the account were addressed to Crown Forex, LLC, 5413 Nicollet Ave., Ste. 14, Minneapolis, Minnesota 55419, which was merely the location of a mail drop service.

30. Approximately \$80 million in customer funds was deposited into the Crown Forex, LLC account XXXXXX1705 at Associated Bank, but none of the funds deposited into the Crown Forex, LLC account at Associated Bank were sent to Crown Forex SA as represented to customers. Defendants issued account statements to their customers that falsely reported that their funds were invested with Crown Forex SA and were consistently profitable.

31. On December 9, 2008, FINMA, by “super-provisional decision,” appointed two attorneys as “investigation agents” to take control of Crown Forex, SA and conduct an investigation into its operations for illegal acceptance of customer deposits and illegal activity as a foreign currency trader. FINMA also prohibited Crown Forex, SA from

accepting any new clients or honoring any withdrawal requests. The investigation agents notified Cook of FINMA's decision to appoint them to take control of Crown Forex, SA on December 11, 2008.

32. On February 23, 2009 FINMA ordered Crown Forex SA liquidated and dissolved and on May 18, 2009 FINMA placed Crown Forex, SA into bankruptcy effective May 19, 2008 and prohibited Crown Forex, SA from accepting any additional funds for forex trading. The investigation agents previously appointed to take control of Crown Forex, SA served as the bankruptcy liquidators.

33. On July 30, 2009, Crown Forex, SA's bankruptcy liquidators posted the following statements on its website:

- a. "Since December 9, 2008 no new client (sic) and no new account (sic) have been accepted by CROWN FOREX SA."
- b. "Since May 19, 2009 at 8:00 (Swiss time), CROWN FOREX SA has suspended its activities and has accepted or received no fund (sic) from investors."
- c. "CROWN FOREX SA, in liquidation does not hold segregated bank accounts."
- d. "CROWN FOREX SA, in liquidation does not hold any account with ASSOCIATED BANK in the US."
- e. "CROWN FOREX SA, in liquidation and CROWN FOREX, LLC are two different and separate entities."

f. “Account statements with false account numbers may have been issued in the name of CROWN FOREX SA in favour of persons who are not registered as client (sic) of CROWN FOREX SA, in liquidation. Account statements may therefore not be sufficient to substantiate the existence of a contractual relation or of a claim against CROWN FOREX SA, in liquidation.”

34. Although Defendants knew that FINMA was investigating Crown Forex, SA as of December 2008, and were aware of the prohibitions that FINMA imposed on Crown Forex, SA described above, Defendants did not advise customers or prospective customers of these matters or their impact on Crown Forex, SA, and represented to customers that Crown Forex SA was financially sound and a good place to invest their funds until late June or July 2009. The information only became public by reason of the liquidators posting on the Internet and a private lawsuit filed against Cook and others on July 7, 2009 in federal district court in Minnesota. *See Phillips et al. v. Cook et. al.*, Case No. 09-cv-1732.

35. Although FINMA prohibited Crown Forex, SA from accepting any new clients after December 9, 2008, and any additional funds for forex trading as of May 19, 2009, Defendants continued to solicit and accept funds from customers and potential customers until at least July 7, 2009, and to represent to them that their funds would be used in part to trade forex at Crown Forex, SA.

36. On information and belief, Defendants used at least \$12.7 million of customer funds to purchase property and develop a hotel and casino in Panama. Cook is

pictured on the hotel's website and described as "a co-founder and shareholder of Oxford Developers, S.A. bringing Panama Bay Hotel Casino and Conference Center to Panama."

37. From March 2007 through July 2009, Cook sent over \$10 million of customer funds to an entity called JDFX in Zurich, Switzerland that trades forex. These funds were used to purchase a share of the company, among other things.

38. On information and belief, Cook also used customer funds for personal expenses including frequent gambling, the purchase of at least seven luxury cars, a house boat and a submarine.

39. Defendants' customers have been unable to withdraw the funds that they deposited with Defendants, funds that they were told were deposited with Crown Forex, SA or other entities for forex trading purposes. Crown Forex SA's bankruptcy liquidators have advised at least three of these customers, who understood from Cook, Kiley and other agents of OGP that their funds had been invested with Crown Forex, SA, that there is no evidence that their funds were sent there. Specifically, they told at least one customer that there is "no trace of funds credited to the account of CROWN FOREX SA by yourself or on your behalf by a third party."

40. Defendants have not provided customers with any explanation as to what happened to their money. On July 21, 2009, OGP, Universal Brokerage FX and UBFXG websites stated that OGP, UBFX and UBFXG are "unable to fulfill any withdrawal or redemption requests."

**D. The Nature of the Transactions**

41. Neither Defendants nor any purported counterparties to the purported forex transactions were financial institutions, registered brokers or dealers, insurance companies, financial holding companies, or investment bank holding companies or the APs of financial institutions, registered brokers or dealers, insurance companies, financial holding companies, or investment bank holding companies.

42. Some or all of Defendants' customers were not "eligible contract participants" as that term is defined in Section 1a(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12)(A)(xi) (2006) (an "eligible contract participant," as relevant here, is an individual with total assets in excess of (i) \$10 million, or (ii) \$5 million and who enters the transaction in order to hedge risk).

43. The forex transactions purportedly conducted by Defendants on behalf of their customers were entered into on a leveraged or margined basis. Defendants were required to provide only a percentage of the value of the forex contracts that they purchased.

44. The forex transactions purportedly conducted by Defendants neither resulted in actual delivery of currency within two days nor created an enforceable obligation to deliver between a seller and a buyer that had the ability to deliver and accept delivery, respectively, in connection with their lines of business. Rather, these forex contracts purportedly remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

**E. Cook and Kiley are Controlling Persons of OGA, OGP, UBFXA, UBFXG, UBFXM and UBSDG**

45. From at least June 18, 2009 through July 2009, Cook has owned, operated and managed OGA and OGP, and has operated and managed UBFXA, UBFXG, UBFXM and UBSDG. Cook exercised control over the day-to-day business operations of OGA, OGP, UBFXA, UBFXG, UBFXM and UBSDG. Cook has been a signatory on at least some of the bank accounts titled in the name of OGA and OGP. Although Cook was not a signatory on the UBFXA, UBFXG, UBFXM and UBSDG bank accounts or the Crown Forex, LLC bank account XXXXXX1705 at Associated Bank, he instructed Kiley and his assistant, who are the signatories on those accounts, regarding withdrawals and deposits of funds, and signed Kiley's name on checks and withdrawal slips in order to withdraw funds from those accounts.

46. At all relevant times, Kiley has owned, operated and managed UBFXA, UBFXG, UBFXM and UBSDG, supervised UBFXA, UBFXG, UBFXM and UBSDG's employees and exercised control over the day to day business operations of UBFXA, UBFXG, UBFXM and UBSDG. He is a signatory on at least some of UBFXA, UBFXG, UBFXM and UBSDG's bank accounts, as well as the Crown Forex, LLC account XXXXXX1705.

47. Cook and Kiley solicited investors to invest with OGA, OGP, UBFXA, UBFXG, UBFXM and UBSDG.

48. Cook and Kiley knowingly induced and failed to act in good faith respecting OGA's, OGP's, UBFXA, UBFXG, UBFXM and UBSDG's violations by

personally participating in the fraud and knowingly misrepresenting profit potential, risk of loss, and trading profits to prospective and existing customers, misappropriating their money, issuing false statements to them, and failing to have in place an adequate system of supervision to protect customers.

## **VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

### **COUNT ONE**

#### **Violations of Section 4b(a)(2)(A) and (C) of the Act, as amended by the CRA: Fraud by Misappropriation, Misrepresentation and Deceit**

49. The allegations set forth in paragraphs 1 through 48 are realleged and incorporated herein by reference.

50. Sections 4b(a)(2)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 4b(a)(2)(A) and (C), prohibit any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a (g) of this title, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market - (A) to cheat or defraud or attempt to cheat or defraud the other person; and (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for the other person.

51. As set forth above, Defendants have cheated, defrauded and deceived or attempted to cheat, defraud or deceive their retail forex customers by making material

misrepresentations and/or failing to disclose material facts to their retail forex customers and by misappropriating their funds in violation of Sections 4b(a)(2)(A) and (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 4b(a)(2)(A) and (C).

52. Cook directly or indirectly controls OGA, OPA, UBFXA, UBFXG, UBFXM and UBSDG and did not act in good faith or knowingly induced, directly or indirectly, their conduct alleged in this Count. Consequently, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Cook is liable for OGA's, OGP's, UBFXA, UBFXG, UBFXM and UBSDG's violations of Sections 4b(a)(2)(A) and (C) of the Act, as amended by the CRA.

53. Kiley directly or indirectly controls UBFXA, UBFXG, UBFXM and UBSDG and did not act in good faith or knowingly induced directly or indirectly, their conduct alleged in this Count. Consequently, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Kiley is liable for UBFXA's, UBFXG's, UBFXM's and UBSDG's violations of Sections 4b(a)(2)(A) and (C) of the Act, as amended by the CRA.

54. The foregoing acts, omissions, and failures of Cook and Kiley occurred within the scope of their agency with OGA, OGP, UBFXA, UBFXG, UBFXM and UBSDG; therefore, OGA, OGP, UBFXA, UBFXG, UBFXM and UBSDG are liable for these acts in violation of Sections 4b(a)(2)(A) and (C) of the Act, as amended by the CRA, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006).

55. Each misrepresentation and omission of material facts, and misappropriation of customer funds, including but not limited to those specifically

alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(2)(A) and (C) of the Act, as amended by the CRA.

## COUNT TWO

### **Violations of Section 4b(a)(2)(B) Of The Act, as amended by the CRA: Fraud By Making False Statements**

56. The allegations set forth in paragraphs 1 through 48 are realleged and incorporated herein by reference.

57. Section 4b(a)(2)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §6b(a)(2)(B), prohibits any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a (g) of this title, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market, willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record.

58. Defendants violated Section 4b(a)(2)(B) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §6b(a)(2)(B), by, among other things, making or causing to be made false account statements, which were issued to at least some customers who invested money with them.

59. Cook directly or indirectly controls OGA, OPA, UBFXA, UBFXG, UBFXM and UBSDG and did not act in good faith or knowingly induced, directly or indirectly, their conduct alleged in this Count. Consequently, pursuant to Section 13(b)

of the Act, 7 U.S.C. § 13c(b) (2006), Cook is liable for OGA's, OGP's, UBFXA, UBFXG, UBFXM and UBSDG violations of Section 4b(a)(2)(B) of the Act, as amended by the CRA.

60. Kiley directly or indirectly controls UBFXA, UBFXG, UBFXM and UBSDG and did not act in good faith or knowingly induced directly or indirectly, their conduct alleged in this Count. Consequently, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Kiley is liable for UBFXA, UBFXG, UBFXM and UBSDG violations of Section 4b(a)(2)(B) of the Act, as amended by the CRA.

61. The foregoing acts, omissions, and failures of Cook and Kiley occurred within the scope of their agency with OGA, OGP, UBFXA, UBFXG, UBFXM and UBSDG; therefore, OGA, OGP, UBFXA, UBFXG, UBFXM and UBSDG are liable for these acts in violation of Section 4b(a)(2)(B) of the Act, as amended by the CRA, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006).

62. Each false account statement made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a) of the Act.

## **VI. RELIEF REQUESTED**

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

A. Find Defendants liable for violating Sections 4b(a)(2)(A) – (C), of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(2)(A) – (C);

B. Enter an order pursuant to Section 6c(a) of the Act restraining Defendants and all persons insofar as they are acting in the capacity of Defendants' agents, servants, successors, employees, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations;

2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants, wherever located, including all such records concerning Defendants' business operations;

3. Withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets, or other property belonging to or within the custody, control or actual or constructive possession of the Defendants, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan;

C. Enter orders of preliminary and permanent injunction enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants,

employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Engaging in conduct in violation of Sections 4b(a)(2)(A) – (C) of the Act, as amended by the CRA, to be codified at 7 U.S.C. 4b(a)(2)(A) – (C);
2. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006));
3. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2009)) (“commodity options”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for their own personal account or for any account in which they have a direct or indirect interest;
4. having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;
5. controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, and/or forex contracts;

6. soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;

7. applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009);

8. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2009)), agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009);

D. Enter an order directing that Defendants provide the Plaintiff immediate and continuing access to their books and records, make an accounting to the Court of all of Defendants' assets and liabilities, together with all funds they received from and paid to retail forex customers and other persons in connection with retail forex or purported retail forex transactions, including the names, addresses and telephone numbers of any such persons from whom they received such funds from June 18, 2008 to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from retail forex customers, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from June 18, 2008 to and including the date of such accounting;

E. Enter an order requiring Defendants to disgorge to any officer appointed or directed by the Court or directly to their retail forex customers all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest;

F. Enter an order directing the Defendants and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the investors whose funds were received by them as a result of the acts and practices which constituted violations of the Act and Regulations, as described herein;

G. Enter an order requiring Defendants to make restitution by making whole each and every retail forex customer whose funds were received or utilized by them in violation of the provisions of the Act as described herein, including pre-judgment interest;

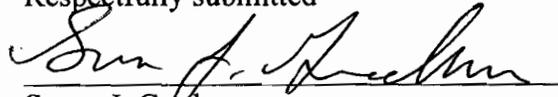
H. Enter an order requiring Defendants to pay civil penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of \$130,000 for each violation between October 23, 2004 and October 22, 2008 and \$140,000 for each violation after October 22, 2008, or triple the monetary gain to each Defendant for each violation of the Act and Regulations;

I. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

J. Enter an Order providing such other and further relief, as this Court may deem necessary and appropriate under the circumstances.

Date: November 23, 2009

Respectfully submitted



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