

UBS Diversified FX Advisors, LLC (“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”), seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange 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. §§ 1 *et seq.* This Court entered an *ex parte* statutory restraining order against Defendants on November 23, 2009.

Defendant Kiley, without admitting or denying the allegations of the Complaint for the purposes of this Agreed Order for Preliminary Injunction and Other Ancillary Relief (“Order”), except as to jurisdiction and venue, which he admits, consents to the entry of this Order.

THE COURT FINDS THAT:

1. This Court has jurisdiction over the subject matter of this action and Defendant Kiley pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear 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.

2. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), in that Defendant Kiley maintains offices in this District and the acts and practices in violation of the Act have occurred within this district.

3. Defendant Kiley waives the entry of findings of facts and conclusions of law for purposes of this Order pursuant to Rule 52 of the Federal Rules of Civil Procedure.

RELIEF GRANTED

IT IS THEREFORE ORDERED THAT:

1. Defendant Kiley, and any person or entity acting in the capacity of an officer, agent, servant, employee or attorney of Kiley, and any person who receives actual notice of this Order by personal service or otherwise who is acting in concert or participation with Kiley, are restrained, enjoined and prohibited, until further order of the Court, from directly or indirectly:

A. Cheating, defrauding or willfully deceiving, or attempting to cheat, defraud or willfully deceive, other persons 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 the Act, 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, 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.

§§ 6b(a)(2)(A) and(C); and

- B. Willfully making or causing to be made to other persons false reports or statements, or willfully entering or causing to be entered for other persons false records, 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 the Act, 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, in violation of 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);

2. Defendant Kiley, and any person or entity acting in the capacity of an officer, agent, servant, employee or attorney of Kiley, and any person who receives actual notice of this Order by personal service or otherwise who is acting in concert or participation with Kiley, are also restrained, enjoined and prohibited, until further order of the Court, from directly or indirectly engaging in any activity related to trading any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (2006) (“commodity interest”), including but not limited to the following:

- A. 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));

- B. 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;
- C. Having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;
- D. 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;
- E. 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;
- F. 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); and

G. 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)..

3. Defendant Kiley and any person or entity acting in the capacity of an officer, agent, servant, employee or attorney of Kiley, and any person who receives actual notice of this Order by personal service or otherwise who is acting in concert or participation with Kiley, are further restrained, enjoined and prohibited, until further order of the Court, from directly or indirectly:

A. Destroying, mutilating, concealing, altering or disposing of any books or records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendant Kiley, wherever located, including all such records concerning its business operations;

B. Refusing to allow representatives of the Commission, when and as requested by those representatives, to inspect the books, records and other electronically stored data, tape recordings, computer disks, computer hard drives, and other documents of Defendant Kiley and its agents, including all such records of its business operations, wherever they are situated and whether they are in the possession of Defendant Kiley or others, and to

copy said documents, data, and records either on or off the premises where they may be located; and

- C. Withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets or other property, wherever situated, within the custody, control or possession of Defendant Kiley, including but not limited to all funds, personal property, money or securities held in safes, safety deposit boxes or otherwise, and all funds on deposit in any financial institution, bank or savings and loan account, whether foreign or domestic, including funds or property of Defendant Kiley's customers, wherever located, held in the name of Defendant Kiley or otherwise. The assets affected by this paragraph shall include both existing assets and income and assets and income acquired after the effective date of this Order.

4. Defendant Kiley shall prepare, sign and file with the Court, within thirty days of the date of this Order, a complete and accurate accounting of all of Defendant Kiley's assets and liabilities, together with all funds Defendant Kiley received from and paid to customers and other persons in connection with commodity futures, options and forex transactions or purported commodity futures, options and forex transactions, including the names, mailing addresses, email addresses and telephone numbers of any such persons from whom it received such funds from June 18, 2008 to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from

customers and other persons, 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.

5. Defendant Kiley shall immediately identify and provide to the Commission an accounting of all assets and property he currently maintains outside the United States, including but not limited to all funds on deposit in any financial institution, futures commission merchant, bank, or savings and loan accounts held by, under the control of, or in the name of Kiley, whether maintained jointly or in any other capacity, and shall repatriate all funds held in such accounts by paying them to the Receiver, except for funds deposited with the MMG Bank Corporation, a banking institution organized under the laws of Panama, in account number XXXXXXXXXXXX1129 (the "MMG Account") which are necessary to secure a Panamanian court order freezing assets and property in Panama that are now subject to the Receivership or as otherwise ordered by the Court, for further disposition in this case.

6. Defendant Kiley shall also produce within a reasonable time period all books, records, and other documents supporting or underlying the accounting, not previously provided to or obtained by the Receiver or the CFTC, referenced in paragraphs 4 and 5 of this Order.

7. It is further ordered that copies of this Order may be served by any means, including facsimile transmission and Federal Express, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or

assets of the Defendants, or that may be subject to any provision of this Order. Judy McCorkle, Eleanor Oh, and Venice Bickham, all employees of the Commission, are hereby specially appointed to serve process, including this Order and all other papers in this cause.

8. This Order shall remain in effect until further order of the Court and the Court shall retain jurisdiction over this action to ensure compliance with this Order and for all other purposes related to this action.

Dated: December 8, 2009

s/ Michael J. Davis
Chief Judge Michael J. Davis
United States District Court