

Oxford Global Advisors, LLC (“OGA”), Universal Brokerage FX Advisors, LLC fka 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.

The Complaint alleges that 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 these customers, by misappropriating their funds, and by making or causing to be made false statements to them in violation of Sections 4b(a)(2)(A) - (C) of the Act as amended by the CRA.

This Court has considered witness testimony at the preliminary injunction hearing on December 4, 2009, the complaint, transcripts of testimony, declarations, exhibits, brief in support of the motion for preliminary injunction and other papers filed herein, and the Court being fully advised in the premises.

THE COURT FINDS THAT:

1. This Court has jurisdiction over the subject matter of this action and the parties 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 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.

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e), in that Defendants UBFXA, UBFXG, UBFXM and UBSDG are found in, inhabit, or transact business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

3. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with administering and enforcing the Act, 7 U.S.C. §§ 1 et seq., and the regulations promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2009).

4. 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.

5. 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.

6. 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.

7. Defendant UBS Diversified Growth, LLC is a Minnesota limited liability company 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.

DEFINITIONS

For the purposes of this Order, the following definitions apply:

8. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

9. "Defendants" means Cook, Kiley, OGP, OGA, UBFXA, UBFXG, UBFXM and UBSDG, and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee or attorney of Defendants, and any person who receives actual notice of this Order by personal service or otherwise, including facsimile, insofar as he or she is acting in concert or participation with defendants.

A. Fraudulent Solicitation of Customers

The verified facts and sworn testimony regarding UBFXA's, UBFXG's, UBFXM's and UBSDG's fraudulent solicitation of Customers show that:

10. Since at least June 18, 2008, UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents have solicited the public to invest in their "foreign currency arbitrage" trading program representing that customer funds would be placed in segregated accounts with Crown Forex SA that Defendants would manage for the purported purpose of forex trading. UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents represented to customers both verbally and in writing that the foreign currency arbitrage program they offered used "fixed swap rate arbitrage utilizing the highest spread between the G5 currency pairs" and that all currency fluctuation risks were directly hedged through a "no swap Shariah compliant bank or liquidity provider." Shariah compliant banks do not charge interest for religious reasons. The strategy was also described as a "fully hedged carry trade." Because the currency positions were allegedly to be fully hedged, UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents represented that "all market risk was eliminated." UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents also made the following representations to customers verbally and/or in writing through brochures they provided to customers and through at least three internet websites:

- a. customers make 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” and
- e. That OGP has over \$4 billion under management.

11. None of the foregoing representations was true, and UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents knew that the representations were false or recklessly disregarded the truth while making these representations. Among other things, to date, most 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. UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents did not use any Shariah compliant banks or financial institutions. UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents also did not achieve the purported actual profits that they represented to customers and potential customers.

12. From at least June 2008 through July 2009, UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents solicited the public to invest in the Defendants’ forex arbitrage trading program through a radio show broadcast from a residence 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 the radio show, UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents 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, UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents knew the representations were false or recklessly disregarded the truth while making these representations. UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents encouraged investors to call and invest via a 1-800 telephone number that was repeated frequently throughout the broadcasts. At least four customers invested with Defendants as a result of listening to the representations on the radio show.

13. UBFXA, UBFXG, UBFXM, UBSDG and their employees and agents solicited customers via telephone and in person at the office in the Van Dusen mansion telling them that they would earn 10-12% annually with no risk of loss through Defendants' foreign currency arbitrage trading program. UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents also told customers that their funds would be held in segregated accounts. UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents also provided at least six investors with a brochure titled "Capital Protected Fixed Yield Enhancement" stating that "because the transaction is done on the same interbank market, the positions offset, eliminating all market risk." At least eight customers invested with Defendants as a result of these verbal representations and the representations in the brochure from June 2008 through early July 2009.

14. UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents also provided customers with account statements via the mail and through a website www.oxfordglobalpartners.com. UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents created the statements. The statements consistently reflected that customers were earning 10-12% per year with no losses. UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents 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. Crown Forex

The verified facts and sworn testimony regarding Crown Forex show that:

15. According to various written and oral representations made by UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents to customers and potential customers, customer funds were to be deposited and/or traded at Crown Forex SA, a Swiss forex trading entity. Many customers were instructed to send their funds to a bank account entitled "Crown Forex" and numbered XXXXXX1705. UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents 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 listed in the name of Crown Forex, LLC and carried with Associated Bank of St. Louis Park, Minnesota. Bank statements for account XXXXXX1705 were addressed to Crown Forex, LLC, 5413 Nicollet Ave., Ste. 14, Minneapolis, Minnesota 55419, which was merely the location of a mail drop service.

16. 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. However, Defendants issued account statements to their customers that falsely reported that their funds were invested with Crown Forex SA and that the investments were consistently profitable.

17. On December 9, 2008, the Swiss Financial Market Supervisory Authority (“FINMA”) by “super-provisional decision” appointed two “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’s decision also prohibited Crown Forex SA from accepting any new clients or honoring any withdrawal requests. The two investigation agents notified Cook of FINMA’s actions on December 11, 2008. 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. On July 30, 2009 the bankruptcy liquidators posted the following statements on Crown Forex SA’s website:

- a. “Since December 9, 2008 no new client and no new account 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 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 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.”

18. Although UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents knew that FINMA was investigating Crown Forex SA as of December 2008, and was aware of the prohibitions that FINMA imposed on Crown Forex described above, UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents did not advise customers or prospective customers of the investigation or its impact on Crown Forex SA; rather, Cook represented to customers until late June or July 2009 that Crown Forex SA was financially sound and a good place to invest their funds. Customers did

not discover that Crown Forex SA was under investigation and in bankruptcy liquidation until late June or July 2009 when they either happened upon the liquidators' posting on the internet or became aware of the lawsuit filed on July 7, 2009 in Minnesota federal district court. *See Phillips et al. v. Cook et al.* Case No. 09-CV-1732.

C. Misappropriation

The verified facts and sworn testimony regarding misappropriation show that:

19. 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, UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents continued until at least July 7, 2009 to solicit and accept funds from customers and potential customers and to represent to them that their funds would be used in part to trade forex at Crown Forex SA.

20. UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents used at least \$12.7 million of customer funds to purchase property in Panama and to fund development of a hotel and casino there. An employee 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."

21. In various installments from March 2007 through July 2009, UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents sent at least \$10 million of customer funds to an entity called JDFX in Zurich, Switzerland that trades forex. These funds were used to purchase an interest in the company.

22. UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents also used customer funds for personal expenses.

23. Customers have been unable to withdraw the funds that they deposited with UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents for trading forex at Crown Forex SA or other entities. Crown Forex SA's bankruptcy liquidators have advised at least three of these customers, who understood from UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents 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."

24. UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents have not provided customers with any explanation as to what happened to their money. As of July 21, 2009, UBFXA, UBFXG, UBFXM and UBSDG and their employees and agents informed customers via letters and on their websites that they are "unable to fulfill any withdrawal or redemption requests."

**VIOLATIONS OF THE COMMODITY EXCHANGE ACT
AND REGULATIONS**

25. By the conduct described in paragraphs 1 through 24 above UBFXA, UBFXG, UBFXM and UBSDG 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).

26. By the conduct described in paragraphs 1 through 24 above UBFXA, UBFXG, UBFXM and UBSDG made or caused to be made false account statements, which were issued to customers who invested money with them, in violation of Section 4b(a)(2)(B) of the Act as amended by the CRA, to be codified at 7 U.S.C. § 4b(a)(2)(B).

PROHIBITION AGAINST VIOLATIONS OF THE ACT

IT IS THEREFORE ORDERED THAT:

1. UBFXA, UBFXG, UBFXM and UBSDG, and any person or entity acting in the capacity of an officer, agent, servant, employee or attorney of UBFXA, UBFXG, UBFXM and UBSDG, and any person who receives actual notice of this Order by personal service or otherwise who is acting in concert or participation with UBFXA, UBFXG, UBFXM and UBSDG, 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. UBFXA, UBFXG, UBFXM and UBSDG, and any person or entity acting in the capacity of an officer, agent, servant, employee or attorney of UBFXA, UBFXG, UBFXM and UBSDG, and any person who receives actual notice of this Order by personal service or otherwise who is acting in concert or participation with UBFXA, UBFXG, UBFXM and UBSDG, 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. Defendants UBFXA, UBFXG, UBFXM and UBSDG and any person or entity acting in the capacity of an officer, agent, servant, employee or attorney of UBFXA, UBFXG, UBFXM and UBSDG, and any person who receives actual notice of this Order by personal service or otherwise who is acting in concert or participation with UBFXA, UBFXG, UBFXM and UBSDG, 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 UBFXA, UBFXG, UBFXM and UBSDG, 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 UBFXA, UBFXG, UBFXM and UBSDG and its agents, including all such records of its business operations, wherever they are situated and whether they are in the possession of UBFXA, UBFXG, UBFXM and UBSDG 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 UBFXA, UBFXG, UBFXM and UBSDG, 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 UBFXA's, UBFXG's, UBFXM's and UBSDG's customers, wherever located, held in the name of UBFXA, UBFXG, UBFXM and UBSDG 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. UBFXA, UBFXG, UBFXM and UBSDG shall prepare, sign and file with the Court, within ten days of the date of this Order, a complete and accurate accounting of all of UBFXA's, UBFXG's, UBFXM's and UBSDG's assets and liabilities, together with all funds Defendants UBFXA's, UBFXG's, UBFXM's and UBSDG's 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 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 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. Defendants UBFXA, UBFXG, UBFXM and UBSDG shall immediately identify and provide to the Commission an accounting of all assets and property they currently maintain 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 UBFXA, UBFXG, UBFXM and UBSDG, whether maintained jointly or in any other capacity, and shall repatriate all funds held in such accounts by paying them to the R.J. Zayed, temporary 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. UBFXA, UBFXG, UBFXM and UBSDG shall also produce within a reasonable time period all books, records, and other documents supporting or underlying the accounting 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.

IT IS SO ORDERED.

Dated: December 8, 2009

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