
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff(s)

Case No: 09-cv-3332 MJD/FLN

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, UNIVERAL
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,

Defendant(s)

R.J. ZAYED,

Receiver.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Case No: 09-cv-3333 MJD/FLN

Plaintiff(s)

v.

TREVOR G. COOK,
PATRICK J. KILEY,
UBS DIVERSIFIED GROWTH, LLC,
UNIVERSAL BROKERAGE FX
MANAGEMENT, LLC,
OXFORD GLOBAL ADVISORS, LLC,
and OXFORD GLOBAL PARTNERS, LLC,

Defendants

and

BASEL GROUP, LLC,
CROWN FOREX, LLC,
MARKET SHOT, LLC,
PFG COIN AND BULLION,
OXFORD DEVELOPERS, S.A.,
OXFORD FX GROWTH, L.P.,
OXFORD GLOBAL MANAGED
FUTURES FUND, L.P., UBS DIVERSIFIED
FX ADVISORS, LLC, UBS DIVERSIFIED
FX GROWTH, L.P., UBS DIVERSIFIED
FX MANAGEMENT, LLC, CLIFFORD
BERG, and ELLEN BERG,

Relief Defendants.

R.J. ZAYED,

Receiver

PROTECTIVE ORDER

Upon stipulation and joint motion by counsel for the parties [##637, 690] —the Receiver and the Investor Respondents named in the Receiver’s *Petition for Return of Receivership Assets from Investor Respondents* (SEC Docket No. 384)—the Court hereby enters an order pursuant to Fed. R.Civ. P. 26(c) that confidential information be disclosed only in ways here designated:

1. As used in the Protective Order, these terms have the following meanings:
 - (a) **“Investor Respondents”** means the individuals named in the *Petition for Return of Receivership Assets from Investor Respondents*, filed by the Receiver on July 23, 2010 (Docket No. 384);
 - (b) **“Attorneys”** means:
 - i. The Receiver and any attorneys, paralegals, and staff employed by them who have been assisting the Receiver in performing his duties in this litigation, including attorneys of the law firm Carlson, Caspers, Vandenburg & Lindquist;
 - ii. Attorneys of record for the Investor Respondents and the attorneys, paralegals, and staff employed by them who have been assisting in this action;
 - iii. Attorneys of record for the United States Securities and Exchange Commission (“SEC”) and the attorneys, paralegals, and staff employed by them who have been assisting in this action; and
 - iv. Attorneys of record for the United States Commodity Futures Trading Commission (“CFTC”) and the attorneys, paralegals, and staff employed by them who have been assisting in this action.
 - (c) **“Party” or “Parties”** means the Receiver; the Investor Respondents; the SEC; and the CFTC;

- (d) **“Confidential”** documents are documents designated pursuant to paragraph 2;
- (e) **“Confidential – Attorneys’ Eyes Only”** documents are the subset of Confidential documents designated pursuant to Paragraph 5;
- (f) **“Documents”** are all materials within the scope of Fed. R. Civ. P. 34;
- (g) **“Outside Vendors”** means messenger, copy, coding, and other clerical-services vendors not employed by a party or its Attorneys;
- (h) **“Information”** includes all materials within the scope of documents, exhibits, evidence or things used at trial, depositions or other proceedings; any testimony, whether given at trial or a deposition; and any other means of presenting, producing or revealing information; and
- (i) **“Written Assurance”** means an executed document in the form attached as Exhibit A.

2. **Designation as Confidential Information:** By identifying a document or other information as “Confidential,” a party may designate any document or information—including testimony, interrogatory responses, other discovery responses, or transcripts—that it in good faith contends to constitute or contain confidential information within the scope of Rule 26(c). If a party is required to serve and file a document containing “Confidential” information, including but not limited to answers to interrogatories, the party may serve and file that information in a separate document or with the relevant pages conspicuously marked.

3. **Scope of Use:** All Confidential documents, along with the information contained in the documents, shall be used solely for the purpose of this action, and no

person receiving such documents shall, directly or indirectly, use, transfer, disclose, or communicate in any way the documents or their contents to any person other than those specified in paragraph 4. Any other use is prohibited.

4. **Access to “Confidential” Information:** Access to any Confidential document shall be limited to:

- (a) the Court and its staff;
- (b) Attorneys, their law firms, and their Outside Vendors;
- (c) persons shown on the face of the document to have authored or received it, or, in the case of a deposition or trial testimony transcript, the person shown on the face to have given the testimony recorded therein;
- (d) court reporters retained to transcribe testimony;
- (e) the Investor Respondents;
- (f) outside independent persons (*i.e.*, persons not currently or formerly employed by, consulting with, or otherwise associated with any party) who are retained by a party or its Attorneys to furnish technical or expert services, and/or to give testimony in this action.

5. **“Confidential – Attorneys’ Eyes Only” Information:** The parties shall have the right to further designate Confidential documents or portions of documents as “Confidential – Attorneys’ Eyes Only,” where, in the good faith judgment of the designating party, the information in said documents is not publicly available and one or more of the other parties could obtain an advantage, economic or otherwise, from the disclosure or use of that information. Disclosure of such information shall be limited to the persons designated in Paragraphs 4(a), (b), (c), (d), and (f).

6. **Third Parties:** Third parties producing documents in the course of this action may also designate documents as “Confidential” or “Confidential – Attorneys’ Eyes Only,” subject to the same protections and constraints as the parties to the action. All documents or information produced by such third parties shall be treated as “Confidential – Attorneys’ Eyes Only” for a period of 10 business days from the date of their production, and during that period any party may designate such documents as “Confidential” or “Confidential – Attorneys’ Eyes Only” pursuant to the terms of the Protective Order.

7. **Written Assurance Under Paragraph 4:** Each person appropriately designated pursuant to Paragraph 4(e) to receive “Confidential” information shall execute a “Written Assurance” in the form attached as Exhibit A prior to receiving any information designated “Confidential.”

Each person appropriately designated pursuant to Paragraph 4(f) to receive “Confidential” or “Confidential – Attorneys’ Eyes Only” information shall execute a “Written Assurance” in the form attached as Exhibit B prior to receiving any information designated “Confidential” or “Confidential – Attorneys’ Eyes Only.”

8. **Disclosure to Other Persons:** Counsel for the party or non-party that has disclosed any Information designated “Confidential” or “Confidential – Attorneys’ Eyes Only” shall be notified at least 10 business days prior to any intended disclosure of such Information to any person designated pursuant to Paragraph 4(f). Such notice to counsel shall provide a sufficient description of the person to whom disclosure is sought to permit

objection to said disclosure. If a party or non-party objects in writing to such disclosure within 10 business days after receipt of notice, no disclosure of any such designated Information shall be made until the party seeking disclosure obtains the prior approval of the Court or the objecting party or non-party. In such a case of objection to disclosure, the parties and any non-parties will confer and in good faith attempt to reach agreement. If the requested disclosure is not ultimately agreed to, the party seeking to disclose such Information may move the Court for appropriate relief, providing notice to any non-party whose designation of produced documents as “Confidential” or “Confidential – Attorneys’ Eyes Only” in the action may be affected. The party or non-party objecting to the disclosure of such Information to a person designated pursuant to Paragraph 4(f) shall have the burden of proving that such Information warrants protection from disclosure to said designated person. Under such circumstances, no disclosure will occur until the Court has resolved the dispute.

9. **Depositions:** All depositions or portions of depositions taken in this action and any documents, things, or exhibits used at those depositions that contain trade secret or confidential information may be designated “Confidential” or “Confidential – Attorneys’ Eyes Only” and thereby obtain the protections accorded other “Confidential” or “Confidential – Attorneys’ Eyes Only” documents. Confidentiality designations for depositions shall be made either on the record or by written notice to the other party within ten (10) calendar days of receipt of the transcript. Unless otherwise agreed, depositions shall be treated as “Confidential – Attorneys’ Eyes Only” during the 10-

calendar-day period following receipt of the transcript. The deposition of any witness (or any portion of such deposition) that encompasses Confidential information shall be taken only in the presence of persons who are qualified to have access to such information under Paragraphs 4–5. Unless otherwise agreed upon by the parties, any transcript, or the applicable portions thereof, shall be marked “Confidential – Attorneys’ Eyes Only, pursuant to Protective Order dated [date of this Protective Order].” All portions of the transcript and all exhibits designated as “Confidential” or “Confidential – Attorneys’ Eyes Only” shall be filed under seal and kept under seal until further Order of the Court.

10. **Inadvertent Failure to Identify:** Any party who inadvertently fails to identify documents as “Confidential” or “Confidential – Attorneys’ Eyes Only” shall have 10 business days from the discovery of its oversight to correct its failure. Such failure shall be corrected by providing written notice of the error and substituted copies of the inadvertently produced documents. Any party receiving such inadvertently unmarked documents shall make reasonable efforts to retrieve documents distributed to persons not entitled to receive documents with the corrected designation.

11. **Inadvertent Disclosure:** Any party who inadvertently discloses documents that are privileged or otherwise immune from discovery shall, promptly upon discovery of such inadvertent disclosure, so advise the receiving party and request that the documents be returned. The receiving party shall return, sequester, or destroy such inadvertently produced documents, including all copies, within 5 business days of receiving such a written request. The party returning such inadvertently produced

documents may thereafter seek re-production of any such documents pursuant to applicable law.

12. **Filing of Confidential Documents:** If a party files a document containing “Confidential” or “Confidential – Attorneys’ Eyes Only” information with the Court, it shall do so in compliance with the Electronic Case Filing Procedures for the District of Minnesota and, unless the parties agree otherwise, file said document under seal. Prior to disclosure at trial or a hearing of materials or information designated “Confidential” or “Confidential – Attorneys’ Eyes Only,” the parties may seek further protections against public disclosure from the Court.

13. **Resolution of Objections to Designations and Change in Designation:** Any party may request a change in the designation of any information designated “Confidential” or “Confidential – Attorneys’ Eyes Only.” Any such document shall be treated as designated until the change is completed. If the parties disagree as to the propriety of the designation, the parties will confer and in good faith attempt to reach agreement. If the requested change in designation is not ultimately agreed to, the party seeking the change may move the Court for appropriate relief, providing notice to any third party whose designation of produced documents as “Confidential” or “Confidential – Attorneys’ Eyes Only” in the action may be affected. The party asserting that the material is Confidential shall have the burden of proving that the information in question warrants the protection afforded to documents marked “Confidential” or “Confidential – Attorneys’ Eyes Only.” Under such circumstances, no disclosure will occur until the

Court has resolved the dispute.

15. **Destruction Upon Termination of Action:** Within 60 calendar days of the termination of this action, including any appeals, each party shall either destroy or return to the opposing party all documents designated by the opposing party as “Confidential” or “Confidential – Attorneys’ Eyes Only” and all copies of such documents, and shall destroy all extracts and data taken from such documents. Each party shall provide a certification as to such return or destruction as within the 60-day period. The Attorneys, as defined by this Protective Order, shall be entitled to retain, however, a set of all documents filed with the Court and all correspondence generated in connection with this action, along with any work product generated in connection with this action.

16. **Modification:** Any party may apply to the Court for a modification of the Protective Order, and nothing in the Protective Order shall be construed to prevent a party from seeking such further provisions enhancing or limiting confidentiality as may be appropriate.

17. **Privilege and Waiver:** No action taken in accordance with the Protective Order shall be construed as a waiver of any claim or defense in the action or of any position as to discoverability or admissibility of evidence. Nothing in this Protective Order is intended to affect any right any party otherwise might have under the rules governing this proceeding or the attorney-client or work-product privilege.

18. **Limits of Protective Order:** Nothing in this Protective Order shall restrict or prevent any party to this action from disclosing or otherwise using:

- (a) its own information, documents, and exhibits which that party produces or discloses in this action;
- (b) any information produced or disclosed in this action not subject to this Protective Order and not designated as “Confidential” or “Confidential – Attorneys’ Eyes Only;” or
- (c) information that a party already possessed or that it obtained by proper means from other sources.

19. **Continued Obligation Upon Termination of Action:** The obligations imposed by the Protective Order shall survive the termination of this action. Within 60 calendar days following the expiration of the last period for appeal from any order issued in connection with this action, the parties shall remove any materials designated “Confidential” or “Confidential – Attorneys’ Eyes Only” from the office of the Clerk of Court. Following that 60-day period, the Clerk of Court shall destroy all such designated materials and all other materials filed under seal in accordance with this Protective Order.

20. **No Admissions by the Parties:** Nothing contained in this Protective Order, nor any action taken in compliance with it, shall operate as an admission by any party or third party that any particular information is or is not a confidential or trade secret matter within the contemplation of the law, or prejudice in any way the right of any party or third party to seek a Court determination of whether or not any particular materials should be disclosed or if disclosed, whether or not they should be subject to the terms of this Order.

21. **Third Party Beneficiaries:** The parties agree that the SEC and CFTC are intended as beneficiaries under this agreement and may invoke and enforce its terms.

Dated: March 2, 2011

BY THE COURT:

s/ Franklin L. Noel
FRANKLIN NOEL
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT

EXHIBIT A

WRITTEN ASSURANCE

_____ declares that:

I reside at _____ in the City of _____, County of _____, State of _____.

My telephone number is _____.

I am currently employed by _____, located at _____, and my current job title is _____.

I have read and I understand the terms of the Protective Order dated _____, filed in Case No. _____, pending in the United States District Court for the District of Minnesota. I agree to comply with and be bound by the provisions of the Protective Order. I understand that any violation of the Protective Order may subject me to sanctions by the Court.

I shall not divulge any information designated as “Confidential” obtained pursuant to such Protective Order, to any person other than those specifically authorized to receive “Confidential” information under Paragraph 4 of the Protective Order. I shall not copy or use such information except for the purposes of this action and pursuant to the terms of the Protective Order.

As soon as practical, but no later than 30 days after final termination of this action, I shall return to the attorney from whom I have received them, any documents in my

possession designated “Confidential” and all copies, excerpts, summaries, notes, digests, abstracts, and indices relating to such documents.

I submit myself to the jurisdiction of the United States District Court for the District of Minnesota for the purpose of enforcing or otherwise providing relief relating to the Protective Order.

Executed on _____
(Date) (Signature)

EXHIBIT B

WRITTEN ASSURANCE

_____ declares that:

I reside at _____ in the City of

_____, County of _____, State of _____.

My telephone number is _____.

I am currently employed by _____, located at

_____, and my current job

title is _____.

I have read and I understand the terms of the Protective Order dated _____, filed in Case No. _____, pending in the United States District

Court for the District of Minnesota. I agree to comply with and be bound by the

provisions of the Protective Order. I understand that any violation of the Protective

Order may subject me to sanctions by the Court.

I shall not divulge any information designated as “Confidential” obtained pursuant to such Protective Order, to any person other than those specifically authorized to receive

“Confidential” information under Paragraph 4 of the Protective Order. I shall not divulge

any information designated as “Confidential—Attorneys’ Eyes Only” obtained pursuant

to such Protective Order, to anyone other than a person authorized to receive

“Confidential—Attorneys’ Eyes Only” information under Paragraph 5 of the Protective

Order. I shall not copy or use such information except for the purposes of this action and

pursuant to the terms of the Protective Order.

As soon as practical, but no later than 30 days after final termination of this action, I shall return to the attorney from whom I have received them, any documents in my possession designated “Confidential” or “Confidential—Attorneys’ Eyes Only,” and all copies, excerpts, summaries, notes, digests, abstracts, and indices relating to such documents.

I submit myself to the jurisdiction of the United States District Court for the District of Minnesota for the purpose of enforcing or otherwise providing relief relating to the Protective Order.

Executed on _____
(Date) (Signature)