

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

R.J. ZAYED, In His Capacity)	CIVIL ACTION
As Court-Appointed Receiver)	
For The Oxford Global Partners, LLC,)	File No.: 13-cv-232 (DSD/JSM)
Universal Brokerage FX, and Other)	
Receiver Entities,)	
)	<u>COMPLAINT</u>
Plaintiff,)	
v.)	JURY TRIAL DEMANDED
)	
Associated Bank, N.A.,)	
)	
Defendant.)	

R.J. Zayed, in his capacity as Court-appointed Receiver (the “Receiver”) for UBS Diversified Growth, LLC d/b/a UBS Diversified, Market Shot, LLC, Oxford Global Advisors, LLC, Oxford Global Partners, LLC, Oxford Global FX, LLC, Oxford FX Growth, L.P., and various other entities controlled by them (the “Receivership Entities”) files this Complaint against Defendant Associated Bank, N.A. and alleges as follows:

NATURE OF THE CASE

1. This matter involves a prolific Ponzi scheme, which took an estimated \$190 million from investors over the course of three years. The operators of the Ponzi scheme were Trevor Cook, Patrick Kiley, Chris Pettengill, Gerald Durand, and Jason Bo-Alan Beckman. Cook is currently serving a twenty-five year prison sentence for pleading guilty to his role in the massive fraud. (Ex. 1) Pettengill entered a plea agreement as to wire fraud, securities fraud and engaging in monetary transactions in property derived

from unlawful activity. After cooperating with the government, Pettengill was sentenced to a seven and a half year prison term on January 3, 2013. (Ex. 2) Beckman, Durand, and Kiley have been convicted by jury on numerous counts of fraud for their roles in the Ponzi scheme. Beckman and Durand were also sentenced on January 3, 2013. Beckman received a thirty-year prison sentence, Durand received a twenty-year prison sentence, and Kiley awaits sentencing.

2. R.J. Zayed is the Court-appointed Receiver (hereafter, alternately referred to as “Receiver” or “Plaintiff”) for Oxford Global Partners, LLC, Oxford Global FX, LLC, Oxford FX Growth, L.P., Universal Brokerage FX Management, LLC, Market Shot, LLC, and various other entities controlled by them (hereafter referred to collectively as “Receiver Estate”, “Receiver Estates”, or “Receivership Estate”). The Receiver brings this action against Associated Bank, NA (hereafter, alternately referred to as “Associated Bank”, “the Bank”, or “Defendant”).

3. The Ponzi scheme at issue in this Complaint concerned a purported currency-trading program (the “Currency Program”) designed and promoted by Cook, Kiley and Shadi Swais of Crown Forex, SA, a Swiss Forex trader. The pitch was to have Cook and Kiley to use the Receiver Estates to promote investing with Crown Forex, SA which allegedly had the foreign currency trading expertise to generate a guaranteed return in excess of 10% per year with total liquidity 24 hours a day, seven days a week. In addition, investors were promised that their funds would be held in individual, segregated accounts. These promises were false.

4. For the Currency Program to succeed, Cook, Kiley and Shadi Swais needed a cooperative bank, a bank that would allow sham accounts to be opened in the name of fictitious entities, create account documentation containing false information designed to avoid scrutiny, ignore federal money laundering regulations, ignore internal procedures, provide false and misleading information to investors and assist in the transfer of investor money to their own accounts, among other things. They turned to Associated Bank and with the Bank's substantial assistance, the Currency Program took in over \$79 million in investor funds.

5. For example, when Cook, Kiley and Shadi Swais first discussed the Currency Program with Associated Bank, Vice President Lien Sarles ("Sarles") was told that the plan was to have Crown Forex, SA open an account at Associated Bank to directly receive investor funds. Associated Bank advised that opening an account for the foreign domiciled Crown Forex, SA would create regulatory difficulties. Instead, Associated Bank recommended opening an account for a similarly named domestic LLC to receive investor funds, which would be subsequently transferred out of the United States to Crown Forex, SA. The account that was opened to accomplish this was the Crown Forex LLC account #1705. (Ex. 3, at 1763-1764—Deposition of Trevor Cook) As with the Currency Program, Crown Forex LLC and its Associated Bank account #1705 were a fraud.

6. The Crown Forex LLC account #1705 was at all times a sham account opened to a fictitious entity. Crown Forex LLC was never registered with the State of

Minnesota or any other governmental authority. Associated Bank knew this and still opened the account:

14. I had previously opened accounts for Kiley and Cook and had been provided by them all necessary account opening documents and information. When I opened the Crown Forex LLC account, I was not provided with Secretary of State registration documentation. I told Kiley that he must send the documentation to me after he completed a Secretary of State filing for Crown Forex LLC. At the time I was opening the Crown Forex LLC account, I was aware that the account would hold client investment funds.

(Ex. 4—Affidavit of former Associated Bank Vice President Lien Sarles)

7. To cover up the lack of proper registration documents, Associated Bank falsified the account application to indicate that registration documents had been provided in compliance with the Patriot Act:

Required: For Patriot Act compliance: (Complete one of the following sections)		
If Organization/Non-profit (required for individual opening this account, not required for authorized signers):		
Individual's Name: _____	Birth Date: _____	Taxpayer I.D. No. _____
Address (if different from Acct Addr): _____		
ID1: DL/National ID _____	_____	Phone: _____
ID1: DL/National Issuer _____	Issue Date _____	Expiration Date _____
ID2: DL/National No. _____	Issue Date _____	Expiration Date _____
ID3: DL/National No. _____	Issue Date _____	Expiration Date _____
If Corporate/Partnership/LLC/LLP (Please describe type of documentation provided (e.g. Articles of Incorporation, etc.) All documentation must be forwarded to the CIF Dept. MS 7012.		
Report from a state registration information website		

(Ex. 5)

8. Even warnings that the account would be closed or frozen for lack of proper documentation by the Bank's Monitoring Department were ignored by the Associated Bank employees working at the branch where millions had already been deposited into the Crown Forex LLC account #1705:

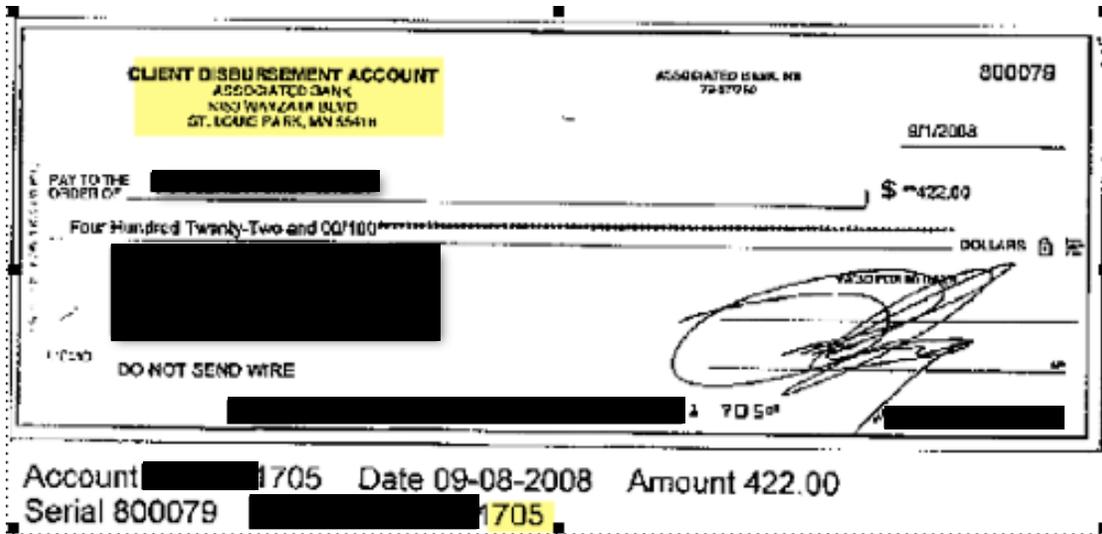
17. I did not remember to follow-up with Kiley to obtain the missing Secretary of State registration documentation. To the best of my knowledge, the Crown Forex LLC account remained open and active despite a lack of proof of Secretary of State registration.

18. In the first quarter of 2009, I recall receiving emails from Associated Bank reminding me to obtain certain account opening materials related to customer accounts that I was opening.

19. Around this time, one of the administrative assistants informed me that the monitoring department would be closing or freezing accounts after a forty-five day period if the proper account opening documentation was not provided.

(Ex. 4—Vice President Sarles Affidavit)

9. Associated Bank also allowed checks to issue from the Crown Forex LLC account #1705 for investor “profits” that identified Associated Bank as the issuer, and not Crown Forex LLC. The checks even identified a fictitious “Client Disbursement Account.” This varnished the scheme with a layer of legitimacy by associating the scheme with a recognized U.S. bank and by creating the impression that the funds were maintained in individual client accounts at the Bank:



(Ex. 6)

10. Associated Bank also assisted Cook in diverting millions in investor funds held in the Crown Forex LLC account #1705 to his own personal Associated Bank accounts. This was done in a number of ways. First, Vice President Sarles approved internal transfers that sent over \$3 million in investor funds from the Crown Forex LLC account #1705 to Cook's personal accounts at Associated Bank, even though Vice President Sarles knew the funds in account #1705 were investor funds to be traded with Crown Forex, SA. (Ex. 7) Second, Associated Bank also allowed Cook to personally transfer over a million dollars in investor funds from account #1705 to his own Associated Bank accounts even though Cook had no signatory authority over the investor funds being held in account #1705. (Exs. 8-9)

11. Associated Bank also helped Cook obtain \$600,000 in cash from the investor funds in the Crown Forex LLC account #1705 by transferring the necessary funds from account #1705 to Cook's own account at the Bank, making special

arrangements to have the cash on hand, and then allowing Cook to stuff the cash into a box and walk out the door under the pretext of buying a yacht. (Ex. 4, ¶¶ 23-24—Vice President Sarles Affidavit)

12. Associated Bank even allowed Cook to walk off with the cash despite internal suspicions about Cook and the yacht purchase being raised at least a week earlier by several bank employees including several Vice Presidents and a member of the Security and Crime Prevention Department. Associated Bank ignored these widespread suspicions:

From: Bianchi, Stephen
Sent: Thursday, June 25, 2009 3:28 PM
To: Paulson, Eileen; Blank, Barbara; Sheerer, Chari; Jaap, Cecilia; Abel, Rebecca; Martens, David
Cc: Simon, Tamara; Sarles, Lien; Fender, Echo; Regan, Barbara; Steen, Steven
Subject: RE: RESPONSE NEEDED \$600K w/d - Oxford Global #2283182331

An approval was not given for two reasons. Number one, I did not speak with Tammy Simon, who spoke with the client, until 2:02pm. The second is that Eileen's **email raised a red flag**.

The money transferred should have been transferred by Crown Forex with an internal wire transfer instead of a internal bank transfer. Because ownership and signers are not the same or overlapping, the money should be deposited into Oxford Global via check or wire. The accounts are not related. Therefore, the transfer will be reversed (money taken out of Oxford Global and returned to Crown Forex) and Crown Forex will be instructed to transfer via internal wire transfer the \$600,000 in question. After this internal wire has been verified, I will provide approval for this order to purchase cash. The owner of Oxford Global will be notified that funds will not be available until Thursday next week.

From: Cox, Jenny
Sent: Friday, June 26, 2009 9:11 AM
To: Sarles, Lien
Subject: RE: Oxford/Crown Forex

Well I talked to them last night and they said after 8 as they do not open till then. **Is this guy on the up and up....something feels uncomfortable with him**

From: Sarles, Lien
Sent: Friday, June 26, 2009 8:09 AM
To: Cox, Jenny
Subject: RE: Oxford/Crown Forex

Thanks jen. Geesh, the wire department told me it would go out @ 7:30am this morning...

From: Cox, Jenny
Sent: Friday, June 26, 2009 7:18 AM
To: Sarles, Lien; Simon, Tamara; Bianchi, Stephen
Cc: Paulson, Eileen
Subject: Oxford/Crown Forex

I checked the Oxford account this morning. The emanager wire from Crown Forex has not posted yet....apparently there is something that the wire dept has to do on their end when a wire is requested and that will not happen until after 8 when the wire dept is up and running. I will let you know when I see the wire posted and the internal transfer to correct the transaction from 4/30 can be made at that time.

Jen

(Ex. 10)

13. Associated Bank knowingly aided and abetted one of the largest Ponzi schemes in Minnesota's history. As demonstrated above and in further detail below, at a minimum, Associated Bank engaged in and observed enough atypical banking activities and other circumstantial evidence to have actual knowledge of the fraud. Alternatively, Associated Bank was willfully indifferent to the fraud by ignoring the warnings raised about the Crown Forex LLC account #1705, Cook and Kiley's other suspicious activities, and by failing to investigate the suspicions thereby charging Associated Bank with knowledge of the fraud. Furthermore, the bank substantially assisted the fraud by opening the Crown Forex LLC account knowing its connection to Crown Forex, SA and the purpose of investor funds deposited therein, failing to conform with Bank and Bank

Secrecy Act/Anti-money-laundering (“BSA/AML”) guidelines on business and personal accounts, despite serious red flags of fraud and insolvency, and through many other forms of assistance detailed above and below.

JURISDICTION AND VENUE

14. This Court has original jurisdiction under 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000 and there is complete diversity of citizenship between the parties. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 754, 1692, 1367 and Federal Rule of Civil Procedure 4(k)(1)(C).

15. Further, within ten days of his appointment, the Receiver filed the original Complaint and Order Appointing the Receiver in all United States District Courts pursuant to 28 U.S.C. §§ 754 and 1692, giving this Court *in rem* and *in personam* jurisdiction in each district where the Complaint and Order have been filed.

16. Venue is proper in this district under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claim occurred, and the resulting damages were sustained, in Minnesota.

17. Venue is also proper in the District of Minnesota because the Receiver was appointed in this District to marshal, preserve, account for, and liquidate the assets subject to the Receivership Orders and because the damages at issue in this action are Receivership Assets.

THE PARTIES AND PONZI SCHEME PRINCIPALS

18. Plaintiff was appointed as Receiver for the estates of, *inter alia*, Trevor G. Cook, Patrick J. Kiley and various other entities controlled by them (“Receivership Entities”) by the United States District Court for the District of Minnesota, Chief Judge Michael J. Davis presiding, on November 23, 2009 in the cases of *SEC v. Cook et al.*, 09-cv-3333, and *CFTC v. Cook et al.*, 09-cv-3332, and on March 8, 2011 in the case of *SEC v. Beckman et al.*, 11-cv-574. *Order Appointing Receiver*, No. 09-cv-3333, Doc. 13 (D. Minn. Nov. 23, 2009); *Ex Parte Statutory Restraining Order*, No. 09-cv-3332, Doc. 21 (D. Minn. Nov. 23, 2009); *Second Amended Order Appointing Receiver*, No. 09-cv-3333, Doc. 68 (D. Minn. Dec. 11, 2009); *Order Continuing Appointment of the Temporary Receiver*, No. 09-cv-3332, Doc. 96 (D. Minn. Dec. 11, 2009); *Order Appointing Receiver*, No. 11-cv-574, Doc. 10 (D. Minn. Mar. 8, 2011).

19. Pursuant to the Court’s Receivership Orders, the Receiver stands in the place of the Receivership Entities and is authorized to pursue all suits which may be brought by the Receivership Entities. *Second Amended Order Appointing Receiver*, No. 09-cv-3333, Doc. 68 at 3 (D. Minn. Dec. 11, 2009); *Order Continuing Appointment of the Temporary Receiver*, No. 09-cv-3332, Doc. 96, at 4 (D. Minn. Dec. 11, 2009); *Order Appointing Receiver*, No. 11-cv-574, Doc. 10, at 3 (D. Minn. Mar. 8, 2011). The Receivership Entities include “every other corporation, partnership, trust and/or entity (regardless of form) which is directly or indirectly owned by or under the direct or indirect control of Cook or Kiley, or any individual working in concert with any of the

Defendants” *Second Amended Order Appointing Receiver*, No. 09-cv-3333, Doc. 68, at 2 (D. Minn. Dec. 11, 2009); *SEC v. Cook*, Complaint, No. 09-cv-3333, Doc. 1, at 1; *see also Ex Parte Statutory Restraining Order*, No. 09-cv-3332, Doc. 21, at 7 (D. Minn. Nov. 23, 2009).

20. The Receiver Entities include but are not limited to “Universal Brokerage FX Management, LLC;” “UBS Diversified;” “UBS Diversified, LLC;” “UBS Diversified Growth, LLC;” “UBS Global Advisors;” and “United Brokerage Services.” These entities are hereafter referred to collectively as the “UBS Entities.”¹

21. The Receiver Entities also include but are not limited to “Oxford Private Client Group;” “Oxford Global Advisors, LLC;” “Oxford Global Holdings;” “Oxford FX Advisors;” “Oxford FX Management, LLC;” “Oxford Institutional Growth LP;” “Oxford Global Partners, LLC;” “Oxford Global Partners;” “Oxford Capital Investments;” “Oxford Capital Holdings, LLC;” and “Oxford Global FX LLC.” These entities are hereafter referred to collectively as the “Oxford Entities.” (Christopher Pettengill Plea Agreement, ¶ 3(b)).

22. The Ponzi scheme principals used the Oxford and UBS Entities to market and promote the scheme to investors. They used the entities to employ the pitchmen and telemarketers that prospected for potential investors and assisted Cook, Kiley, Beckman,

¹ Pettengill Plea Agreement at ¶ 3(a), available at <http://www.justice.gov/usao/mn/downloads/Pettengill%20Plea%20Agreement%20Final%2006172011.pdf> (last accessed January 10, 2013). *See also, USA v. Pettengill*, No. 11-cr-192 (D. Minn.)

Durand and Pettengill (the “Ponzi scheme principals”) in selling the Currency Program to the investors that attended seminars conducted by the Oxford and UBS Entities. They were also used as the fronts that provided investors with the instructions on how to transfer funds to the Crown Forex LLC account #1705 at Associated Bank. (Ex. 11) As a result of the fraud and other torts perpetrated through them by the Ponzi scheme principals, the Oxford and UBS Entities are considered to be victims and creditors of the Ponzi scheme. *Zayed v. Peregrine Fin. Group, Inc.*, No. 12-cv-269, 2012 U.S. Dist. LEXIS 86468, at *5 (D. Minn. June 22, 2012) (“Because this case involves a Ponzi scheme, the Receivership Entities are considered victims of the fraud and thus creditors of the Ponzi scheme.”).

23. Trevor G. Cook (“Cook”) is serving a 25-year sentence after pleading guilty to crimes he committed in furtherance of an admitted fraudulent scheme. At various times relevant to this Complaint, Cook owned, operated, and was the managing partner of Oxford Global Advisors, LLC (“Oxford Global Advisors”) and Oxford Global Partners, LLC (“Oxford Global Partners”). Cook held himself out publicly as the chief investment director of Oxford Global Partners. Cook also owned and operated Oxford Global FX and Market Shot and held himself out to be a partner and managing director of UBS Diversified Growth, LLC d/b/a UBS Diversified (“UBS Diversified”).

24. Patrick J. Kiley (“Kiley”) has been convicted for his role in the Ponzi scheme. Kiley was the owner and founder of UBS Diversified and Universal Brokerage FX management, LLC (“Universal Brokerage”). At all times relevant to this Complaint,

Kiley hosted a financial-themed radio show that he used to market the Currency Program. Kiley has never been registered with the CFTC and has never been associated with any registered entity. Kiley awaits sentencing for his role in this Ponzi scheme.

25. Christopher Pettengill (“Pettengill”) pleaded guilty on June 20, 2011 to crimes that he committed in connection with the Ponzi scheme. Pettengill was an owner and founder of Oxford Global Investments Inc. Pettengill was sentenced to 90 months in prison for his role in this Ponzi scheme.

26. Jason Bo-Alan Beckman (“Beckman”) was convicted on over 20 fraud and money-laundering counts for his role in the fraudulent scheme. Beckman was sentenced on January 3, 2013 and is serving a 30-year prison sentence. Beckman was the owner and founder of The Oxford Private Client Group, LLC, an investment advisory firm registered with the SEC. Beckman was a self-styled equities expert and spoke at a number of seminars touting his expertise, seminars that were organized by the Oxford and UBS Entities.

27. Gerald Joseph Durand (“Durand”) was convicted on 20 counts for his role in the Ponzi scheme and was also sentenced on January 3, 2013. Durand is serving a 20-year prison term. Similar to Kiley, Durand also had a radio show in furtherance of the Ponzi scheme. Durand was a major contributor to Ponzi scheme investment seminars and presentations.

28. Defendant Associated Bank, N.A. offers banking and financial services throughout Wisconsin, Illinois, and Minnesota, and including the cities of Saint Louis

Park and Eagan, Minnesota. Associated Bank is a corporation organized existing under the laws of the State of Wisconsin, with its principal place of business and headquarters at 200 North Adams Street, Green Bay, Wisconsin 54301.

29. Associated Bank’s branch offices located in Saint Louis Park, Minnesota and Eagan, Minnesota are where the Ponzi scheme principals banked and had opened at least seven accounts as follows:

KILEY ACCOUNTS

<u>DATE</u>	<u>NAME</u>	<u>NUMBER</u>	<u>PURPOSE</u>
January 2, 2008	Universal Brokerage FX Management, LLC	#5601	Sarles knew the account was to hold client funds. (Ex. 4, ¶ 9)
June 16, 2008	Crown Forex LLC	#1705	Sarles knew the account was to hold client funds. (Ex. 4, ¶ 9)
June 8, 2009	Basel Group LLC	#5214	Sarles knew the account was to hold client funds. (Ex. 4, ¶ 9)

COOK ACCOUNTS

<u>DATE</u>	<u>NAME</u>	<u>NUMBER</u>	<u>PURPOSE</u>
September 8, 2008	Oxford Global Partners, LLC	#2356	Sarles knew the account was to hold client funds. (Ex. 4, ¶ 10)
October 8, 2008	Oxford Global FX, LLC	#2331	Sarles knew the account was for Cook’s own use. (Ex. 4, ¶ 10)
December 17, 2008	Market Shot LLC	#8733	Sarles knew the account was for Cook’s own use. (Ex. 4, ¶ 10)

PETTENGILL ACCOUNT

<u>DATE</u>	<u>NAME</u>	<u>NUMBER</u>	<u>PURPOSE</u>
July 9, 2008	Oxford Global Investments Inc.	#1812	To be determined.

30. Crown Forex, SA was a currency-trading firm with operations in Basel, Switzerland. (Ex. 2) Crown Forex, SA's role in the Ponzi scheme was to pretend to be the firm that was to receive the investor funds, hold them in segregated accounts, and facilitate currency trades to generate the guaranteed returns. Crown Forex, SA was operated by Shadi Swais and others representing themselves as foreign exchange experts. Crown Forex, SA, was under investigation by Swiss authorities by December 2008. By May 2009, Swiss authorities had frozen all of Crown Forex, SA's assets, shut the operation down, and placed it into the Swiss equivalency of bankruptcy. Shadi Swais and others who controlled Crown Forex, SA have disappeared along with millions of dollars of investor funds.

31. Not a single penny in investor funds was ever directly transferred from the Crown Forex LLC account #1705 to Crown Forex, SA for trading. Nor was a single penny in investor trading profits ever directly transferred from Crown Forex, SA to the Crown Forex LLC account #1705. Instead, despite the knowledge that account #1705 was holding investor funds for use in the Currency Program and was to be on Crown Forex, SA's books, Associated Bank assisted in the transfer of millions from account #1705 to Cook's own personal bank accounts along with other Receiver related

accounts—all of which would have been caught and stopped by a bank not acting in concert with a massive fraud. (*See* Ex. 12—Declaration of Scott J. Hlavacek, No. 09-cv-3333, Doc. 4, ¶ 35, Ex. 10 (D. Minn. Nov. 23, 2009) (tracing money flow in and out of account #1705).)

FACTS GIVING RISE TO THIS CASE

32. The Receiver incorporates paragraphs 1 through 31 above by reference.

33. Associated Bank’s involvement in the Ponzi scheme was through several of its employees, including Lien Sarles, a former Associate Vice President; Tamara Simon (“Simon”), a former Vice President; and Stephen Bianchi (“Bianchi”) a former Senior Vice President; as well as others. The Crown Forex LLC account #1705 was an integral component of the Ponzi scheme. Investors deposited over \$79 million into the account in less than two years and Associated Bank allowed millions to be subsequently transferred around to other Associated Bank accounts, as well as to accounts at other institutions, until it disappeared.

34. After Sarles joined Associated Bank in November 2007, his brother, Michael Behm, who was working for Kiley at the time, introduced Sarles to Kiley. Sarles subsequently met Cook and Pettengill through Kiley. (Ex. 4, ¶¶ 5, 8) Sometime before January 2008, Sarles personally met with Kiley at Kiley’s place of business to discuss doing business with Associated Bank. (Ex. 4, ¶ 9) At that meeting Sarles learned much about Kiley.

35. First, Vice President Sarles learned, if he already did not know it from his brother, that Kiley's place of business was not located in a business setting at all, but rather, it was located in a suburban home at 12644 Tiffany Court in Burnsville, Minnesota. (Ex. 1) Kiley's main office was nothing more than a converted bedroom with a desk and a few chairs. Vice President Sarles would have also learned that Kiley ran his radio program, which he used to pitch his investment services, out of the house and that his brother, Mike Behm, and others were in the basement working the phones to promote the Currency Program.

36. Shortly after the meeting on January 2, 2008, Kiley opened his first account, Universal Brokerage FX Management LLC account #5601, at Associated Bank. The account documentation prepared by Associated Bank contained several falsehoods and omissions. First, the business address identified on the account documents falsely identified the business as being located in an office "Ste 100" or "Suite #100" (Ex. 13) In addition, despite the knowledge the account was to hold investor funds (Ex. 4, ¶ 9), the account documentation was prepared to falsely indicate that account #5601 was a "Checking/Money Market" account for use as a "GENERAL OPERATING ACCOUNT." (*Id.*) The account documentation did not given any indication that the account was to hold investor funds and was being opened by a financial advisor.

37. The inclusion of this false information and omission of information as to the true purpose of the account was not accidental. It was intended to create a customer profile that avoided scrutiny. Notifying other departments in the Bank that Kiley was a

financial adviser, operating a business unknown to the Bank, from his home, risked subjecting the account to scrutiny under the implementing regulations of the BSA/AML. The BSA/AML requires a bank to Know Your Customer and implement a Customer Identification Program to enable the bank to “form a reasonable belief that it knows the true identity of each customer.”² This would include whether an LLC is properly registered with the Secretary of State and whether the person opening the account had the proper authority. Associated Bank was also required to obtain information at account opening in order to understand the type of activity to expect for the customer’s business operations.³ For high risk customers, such as investment advisors like Cook and Kiley, Associated Bank was required to conduct enhanced due diligence (“EDD”) which required a more extensive review both at account opening and more frequently throughout the relationship with the bank.⁴

38. The activities surrounding the opening of the Crown Forex LLC account #1705 also evidence intent to create a customer profile designed to avoid scrutiny under the implementing regulations of the BSA/AML. As stated above in Paragraph 5, Associated Bank advised Cook, Kiley and Shadi Swais to avoid opening an account in

² 2007 Federal Financial Institutions Examination Council (“FFIEC”) Bank Secrecy Act/Anti-Money Laundering (“BSA/AML”) Examination Manual, at 45, available at http://www.ffiec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2007.pdf (last accessed December 27, 2012). *See also* 12 C.F.R. § 21.21.

³ 2007 FFIEC BSA/AML Examination Manual, at 57.

⁴ 2007 FFIEC BSA/AML Examination Manual, at 57, 255.

the name of the foreign domiciled Crown Forex, SA. As stated above in Paragraphs 6-7, Bank employees opened the account without proper documentation and then covered this up by falsely stating that proper documentation had been provided in compliance with the Patriot Act.

39. As to the purpose of account #1705, the account document again states “Checking/Money Market.” This, of course, was misleading. Associated Bank employees familiar with Kiley knew he was a financial advisor and that the purpose of the account was to hold investor funds for transfer to Switzerland. The true purpose of the account was never included in the account opening documentation.

40. The account documentation even contains a false address that misleadingly creates the impression of the enterprise working out of an office suite instead of Kiley’s house. The documentation prepared by Associated Bank provides an address of 5413 Nicollet Ave, Ste 14, Minneapolis, Minnesota. Yet, through Kiley’s previous dealing with the Bank, the Associated Bank employees working with Kiley knew that his place of business was the house on Tiffany Court in Burnsville, Minnesota.

41. The Nicollet address was actually to a rented mailbox located in a storefront business called GreenDog Sports, pictured below:



(Ex. 14)

42. Associated Bank’s “DECLARATION OF NO WRITTEN OPERATING AGREEMENT” also incorrectly ratifies the legitimacy of Crown Forex LLC. It states “Crown Forex LLC is a Limited Liability Company organized under the laws of Minnesota.” (Ex. 5) Associated Bank executed this document with the knowledge that no Minnesota registration had been obtained.

43. A few weeks later when Kiley requested an Onsite Deposit Manager (“ODM”), which allowed checks to be directly deposited without the need to visit the bank, Associated Bank again prepared documentation containing false information about Crown Forex LLC. Again, the ODM documentation identified Crown Forex LLC’s business address as 5413 Nicollet Ave, Suite 14, Minneapolis, Minnesota (GreenDog Sports). (Ex. 15) Moreover, Associated Banks’ ODM documentation requires that the equipment can only be used at the address provided. (*Id.*) Yet, it was known by

Associated Bank that this was not true since the equipment was being used at the Tiffany Court location and not at the Nicollet address.

44. The totality of the circumstances surrounding the opening of the Crown Forex LLC account #1705 and the Universal Brokerage FX Management LLC account #5601 demonstrates an intent by Associated Bank to disguise the accounts as typical business accounts to avoid subjecting the accounts to scrutiny under the BSA/AML as a result of the accounts actually being used in connection with financial services.

45. On information and belief, Vice President Sarles also knew that he was identified as the Associated Bank representative to assist with the wiring of millions in investor funds into the Crown Forex LLC account #1705. In addition, on information and belief, Vice President Sarles assisted one or more investors in the wiring of funds into the account. Sarles also knew that the investors were told that the funds being wired to Associated Bank were to be used for trading by Crown Forex, SA. Yet, Sarles also knew that Crown Forex, SA was neither an owner of the Crown Forex LLC account #1705 nor even a signatory. Sarles also knew that the beneficiary of the wire transfers, Crown Forex LLC, was an entity that did not exist. Sarles also knew that Cook was transferring millions out of the Crown Forex LLC account #1705 into his personal accounts and for purposes other than to hold customer funds for foreign currency arbitrage at Crown Forex, SA in Switzerland.

46. Once the Crown Forex LLC account #1705 was opened, the Ponzi scheme principals used the Oxford and UBS Entities to solicit investors for the Currency Program

through telemarketing, radio broadcasts, investor seminars, personal meetings, word-of-mouth, and other means. (Christopher Pettengill Plea Agreement, ¶ 3(k).) Investors were fed false promises claiming that the Currency Program i) would generate an annual return of 10.5 to 12 percent; (ii) the Currency Program was a safe investment; (iii) the investor could not lose investment principal; and (iv) the investor could withdraw his or her investment assets at any time. (Christopher Pettengill Plea Agreement, ¶ 3(l).) The Currency Program was a continuation of the Ponzi scheme principals' efforts to defraud investors, which began by at least January 2007 and ultimately defrauded investors of over \$190 million. (Ex. 1) As Cook and Pettengill's plea agreements establish, the financial services and investments being offered through the UBS and Oxford Entities were massive frauds that took in millions of dollars. (Exs. 1-2)

47. In a matter of months, the alleged Crown Forex LLC "Checking/Money Market" account had millions in investor funds flowing into it and subsequently being wired transferred to other accounts at Associated Bank and elsewhere. (Ex. 16) A summary of some of the early wire transfers of investor funds out of the Crown Forex LLC account #1705 to other Associated Bank accounts and accounts held at other banks is provided in the chart below:

July 2, 2008	\$500,000 transferred to Wells Fargo account #2710
July 10, 2008	\$100,000 transferred to Associated Bank account #5601
July 10, 2008	\$2,000,000 transferred to Wells Fargo account #2710
July 18, 2008	\$100,000 transferred to Associated Bank account #1812

July 18, 2008	\$400,000 transferred to Associated Bank account #1812
July 22, 2008	\$500,000 transferred to Associated Bank account #5601
July 23, 2008	\$2,001,000 transferred to Wells Fargo account #5572
July 24, 2008	\$500,000 transferred to Associated Bank account #5601
July 28, 2008	\$1,500,000 transferred to Wells Fargo account #2710
August 7, 2008	\$1,000,000 transferred to Wells Fargo account #2710
August 11, 2008	Over \$2,800,000 transferred to Wells Fargo account #2710 in a series of 11 odd amount wire transfers
August 22, 2008	Over \$8,800,000 transferred to Wells Fargo account #2710 in a series of 39 odd amount wire transfers
September 2, 2008	Over \$2,800,000 transferred to Wells Fargo account #2710 in a series of 23 odd amount wire transfers
September 11, 2008	\$1,000,000 transferred to Wells Fargo account #2710
September 29, 2008	Over \$2,700,000 transferred to Wells Fargo account #2710 in a series of 5 odd amount wire transfers
October 7, 2008	Over \$2,000,000 transferred to Wells Fargo account #2710 in a series of 6 odd amount wire transfers
October 17, 2008	Over \$3,800,000 transferred to Wells Fargo account #2710 in a series of 21 odd amount wire transfers
October 21, 2008	Over \$312,000 transferred to Wells Fargo account #2710 in a series of 6 odd amount wire transfers

48. The BSA/AML and its implementing regulations required Associated Bank to monitor these transfers and deposit account transactions, among other things, to file suspicious activity reports (“SAR”) where suspicious activity is identified.⁵ Monitoring systems include manual systems, automated systems, and employee identification and

⁵ 31 U.S.C. §5318; 12 C.F.R. §21.21; 12 C.F.R §21.11.

referral systems.⁶ Under the BSA/AML, the transfers above would have been flagged by Associated Bank's monitoring systems for suspicious activity. The transfers contain "red flags" of potentially suspicious activities for money laundering, terrorist financing or other financial crimes, such as transfers of large or round dollar amounts; transfer activity is repetitive or shows unusual patterns; and unusual transfers of funds occurring among related accounts or among accounts involving the same or related principals.⁷ A bank employee would have reviewed all of these alerted transactions and made a determination whether or not to file a SAR as required under the BSA/AML. Despite these red flags, upon information and belief, Associated Bank ignored the above telltale signs and its legal duties to report suspicious activity, and thereby allowed the Ponzi scheme to continue.

49. After the opening of the fictitious Crown Forex LLC account #1705, a string of variously named Oxford Global accounts were opened at Associated Bank: Oxford Global Investments Inc. account #1812 (Pettengill account), Oxford Global Partners LLC account #2356 (Cook account), and Oxford Global FX LLC account #2331 (Cook account). (Exs. 17-18) As to the Oxford Global FX LLC account #2356, Sarles understood that the account was to hold investor funds. (Ex. 4, ¶ 10) Yet, again, the purpose of the account was disguised by identifying it as a "Checking/Money Market"

⁶ 2007 FFIEC BSA/AML Examination Manual, at 61.

⁷ 2007 FFIEC BSA/AML Examination Manual at F-1 to F-3.

account. Moreover, no mention is made that the true purpose of the account was to hold client funds for use in connection with Cook's alleged financial advisory services.

50. In late October of 2008, Chris Pettengill, CEO/President of Oxford Global Investments Inc., discovered that he had been removed from the corporation's account #1812 without his permission and brought it to the attention of Associated Bank. (Exs. 18-20) As set forth below, the atypical behavior swirling around this account defies expectations of what any reasonable bank would (and should) do for any customer account:

- a. When the account was opened, Pettengill was identified as the owner of the Oxford Global Investment Inc. account #1812 and Cook was only identified as having signatory authority. (Ex. 18) Associated Bank knew this from the information contained on the account application.
- b. Without Pettengill's knowledge, signature, or any type of consent, Associated Bank changed the ownership of the Oxford Global Investment Inc. account #1812 from Pettengill to Cook within a few months after the account was opened. (Ex. 19)
- c. After Pettengill saw an unexplained \$500,000 in the account (which came from the Crown Forex LLC account #1705) he contacted Associated Bank to discuss the funds. However, Associated Bank refused to discuss the account with him on the grounds that he no longer owned the account. (Ex. 20—Declaration of Christopher Pettengill)

- d. Pettengill then confronted Associated Bank Vice President Sarles and his boss, Senior Vice President Bianchi, in person at the bank. He was again informed of his lack of ownership in the account and was prevented from having any further discussion on the matter. (*Id.*)
- e. Associated Bank removed Pettengill from account #1812 even though there was no supporting documentation to do so and then transferred the funds into the account to one of Cook’s own accounts.

51. The last quarter of 2008 saw millions more in investor funds flow into and out of the Crown Forex LLC account #1705. Again, Associated Bank’s monitoring systems should have detected the red flags, such as those discussed above in Paragraph 48, in the transactions below:

November 14, 2008	\$1,250,000 transferred to Wells Fargo account #2710
November 19, 2008	\$1,200,000 transferred to Wells Fargo account #2710
November 24, 2008	\$1,750,000 transferred to Wells Fargo account #2710
December 1, 2008	\$1,100,000 transferred to Wells Fargo account #2710
December 3, 2008	\$1,000,000 transferred to Wells Fargo account #2710
December 4, 2008	\$97,000 transferred to Cook’s Associated Bank account #2331
December 8, 2008	\$2,150,000 transferred to Wells Fargo account #2710
December 9, 2008	\$2,000,000 transferred to Wells Fargo account #2710
December 18, 2008	\$2,400,000 transferred to Wells Fargo account #2710
December 18, 2008	\$20,000 transferred to Wells Fargo account #3007
December 18, 2008	\$30,000 transferred to Wells Fargo account #3007

(Ex. 16)

52. Within months the Crown Forex LLC account #1705, which was non-interest bearing, had balances in the millions. (Ex. 21) This was essentially free money

for Associated Bank. With no expenses connected with the funds, Associated Bank would have been able to deploy the millions sitting in the account in any number of profit generating uses such as federal funds, commercial paper, or some other investment.

53. On December 17, 2008, Cook opened yet another account at Associated Bank called the Market Shot LLC account #8733. (Ex. 22). Even though Sarles understood this was Cook’s own account (Ex. 4, ¶ 10), and not for investor funds to be traded with Crown Forex, SA, two days after opening the account, Sarles approved a transfer of \$40,000 of investor money from the Crown Forex LLC account #1705 to Cook’s newly opened Market Shot LLC account #8733:

Customer Name	CROWN FOREX LLC	
TRANSFER INFORMATION		
77-Transfer From Account Number	██████████	1705
Transfer From Account Type	Checking	
22-Transfer To Account Number	██████████	8733
Transfer To Account Type	Checking	
Amount	\$	40,000.00
COMMENTS		
Comments (if needed)	Per customer request. Approved by Lien Sarles.	

(Ex. 23)

54. Days later Associated Bank allowed Cook to transfer another \$40,000 of investor money from the Crown Forex LLC account #1705 to his newly opened Market

Shot LLC account #8733 even though Cook had no signatory authority on the Crown Forex LLC account #1705:

CUSTOMER INFORMATION	
Tax ID Number	██████████3875
Customer Name	CROWN FOREX LLC
TRANSFER INFORMATION	
77-Transfer From Account Number	██████████1705
Transfer From Account Type	Checking
22-Transfer To Account Number	██████████8733
Transfer To Account Type	Checking
Amount	\$ 40,000.00
COMMENTS	
Comments (if needed)	Per Trevor

(Ex. 24)

55. On December 30, 2008, Vice President Sarles approved a \$2 million transfer from the Crown Forex LLC account #1705, an account he knew was opened to hold investor funds for trading with Crown Forex, SA, to Oxford Global FX, LLC account #2331, an account Sarles had opened for Cook’s own use:

CUSTOMER INFORMATION	
Tax ID Number	██████████ 3875
Customer Name	CROWN FOREX LLC
TRANSFER INFORMATION	
77-Transfer From Account Number	██████████ 1705
Transfer From Account Type	Checking
22-Transfer To Account Number	██████████ 2331
Transfer To Account Type	Checking
Amount	\$ 2,000,000.00
COMMENTS	
Comments (if needed)	Please transfer \$2,000,000.00. Thank you! Approved by Lien Sartes - C1F6V. Phone 651-306-1611.

(Ex. 7)

56. On December 31, 2008, Associated Bank allowed Cook to transfer another \$1 million in investor funds from the Crown Forex LLC account #1705 to his own Oxford Global FX, LLC account #2331 even though Cook had no signatory authority on the Crown Forex LLC account #1705:

CUSTOMER INFORMATION	
Tax ID Number	██████████3875
Customer Name	CROWN FOREX LLC
TRANSFER INFORMATION	
77-Transfer From Account Number	██████████1705
Transfer From Account Type	Checking
22-Transfer To Account Number	██████████2331
Transfer To Account Type	Checking
Amount	\$ 1,000,000.00
COMMENTS	
Comments (if needed)	per Trevor

(Exs. 8-9)

57. By the first quarter of 2009 the Monitoring Department of Associated Bank was threatening to freeze the Crown Forex LLC account #1705 for lack of proper documentation. (Ex. 4, ¶¶ 18-19) These warnings were ignored and never acted upon since proper documentation was never obtained for Crown Forex LLC.

58. Crown Forex, SA's regulatory troubles were also becoming public around the same time. On December 24, 2008, the Swiss Financial Market Supervisory Authority ("FINMA") announced that Crown Forex, SA's accounts had been frozen. (Ex. 25, ¶ 152) February 2009 saw increased publicity on Crown Forex, SA's regulatory troubles and a number of telephone conferences between Sarles and the Ponzi scheme principals apparently on this very subject:

- February 2, 2009: Google Alert saying Crown Forex, SA is under investigation (Ex. 26)
- February 3, 2009: Sarles calls Trevor Cook (Ex. 27)
- February 9, 2009: One of the Ponzi scheme investors receives an e-mail from FINMA saying Crown Forex, SA is not authorized to conduct business. (Ex. 28)
- February 9, 2009: Sarles has a call concerning Crown Forex (Ex. 29)
- February 23, 2009: FINMA announces the liquidation of Crown Forex, SA. (Ex. 25, ¶ 153)
- February 26, 2009: Sarles has an “important” call with Cook (Ex. 30)

59. Despite all of this, in the first half of 2009, millions more in investor funds flowed into and out of the Crown Forex LLC account #1705. Again, Associated Bank’s monitoring systems should have detected the red flags, such as those discussed above in Paragraph 48. The transactions are set forth in the chart below:

January 16, 2009	\$1,000,000 transferred to Citibank account #5400.
January 20, 2009	\$3,000,000 transferred to Citibank account #5400.
January 21, 2009	\$500,000 transferred to Associated Bank account #2331
January 21, 2009	\$2,995,133.95 transferred to Citibank account #5400.
February 11, 2009	\$2,200,000 transferred to Beckman (co-conspirator in this fraud; convicted in 2012).
February 17, 2009	\$200,000 transferred to Associated Bank account #5601
February 25, 2009	\$2,000,000 transferred to Wells Fargo account #2710
March 10, 2009	\$2,200,000 transferred to Beckman.
March 19, 2009	\$750,000 transferred to Wells Fargo account #2710
March 23, 2008	\$400,000 transferred to Associated Bank account #5601
March 31, 2008	\$700,000 transferred to Wells Fargo account #2710
April 14, 2009	\$300,000 transferred to Associated Bank account #5601
April 30, 2009	\$300,000 transferred to Associated Bank account #5601
April 30, 2009	\$1,700,000 transferred to Associated Bank account #2331
May 19, 2009	\$500,000 transferred to Wells Fargo account #2710
May 21, 2009	\$1,000,000 transferred to Wells Fargo account #2710

60. The April 30, 2009, transfer of \$1.7 million shown above was another transfer approved by Vice President Sarles that moved money from account #1705, which he knew was holding investor funds to be traded with Crown Forex, SA, to an account he knew was for Cook's own use, account #2331. (Ex. 7)

61. On June 8, 2009, Cook asked Sarles to open a third account for Kiley to an entity called Basel Group LLC, which was given account #5214. (Exs. 31-32) Associated Bank complied and, as with Crown Forex LLC, it was a fraud. It too was a fictitious entity that Associated Bank knew never had any legal existence. (Ex. 33) Nonetheless, Associated Bank, again, falsely indicated on the account documentation that the legitimacy of the LLC was verified from a "Report from a state registration information website." (Ex. 32) Yet, as with Crown Forex LLC, no such verification was ever obtained. Nor could verification have even been obtained from any website since Associated Bank knew Kiley had not registered the LLC in the first instance. (Ex. 33)

62. The account was again identified as a "Checking/Money Market" account on the documentation prepared by the Bank. (Ex. 32) Yet, as with Kiley's other accounts, the Associated Bank employees involved with Kiley knew he was a financial advisor and that the account was intended to hold investor funds. (Ex. 4, ¶ 9)

63. On June 25, 2009, Cook requested \$600,000 in cash for the alleged purchase of a yacht. The requested caused a widespread investigation by numerous individuals at the bank, including Senior Vice President Bianchi, Jenny Cox, and Eileen

Paulson of the Security and Crime Prevention department that raised several red flags including the improper transfer of \$1.7 million of investor funds from account #1705 to Cook's own account. These suspicions were ignored, and Associated Bank, even "corrected" the improper \$1.7 million transfer so as to allow Cook to put \$600,000 in cash into a box and walk out the front door. (Ex. 10)

64. Even after internal red flags and suspicions had been raised, Associated Bank continued to allow the Crown Forex LLC account #1705 to be drained of millions more in investor funds. Just days before Cook walked off with the \$600,000 in cash, on June 29, 2009, Associated Bank prepared 14 cashier's checks totaling over \$3.2 million. (Ex. 34) Despite knowing that the remitter for each check was Crown Forex LLC, Associated Bank prepared each check to identify the remitter as either the individual that was identified as the payee or as coming from an IRA or some other account in the name of the payee. Not only did Associated Bank include false remitter information on each check, the fact that it was even requested to do so should have raised suspicions, which were ignored.

65. June and July of 2009 saw even more transfers. Again, Associated Bank's monitoring systems should have detected the red flags, such as those discussed above in Paragraph 48, in the transactions below:

June 8, 2009	\$50,000 transferred to Associated Bank account #2356
June 8, 2009	\$1,000,000 transferred to Wells Fargo account #2710
June 25, 2009	\$1,112,000 transferred to Wells Fargo account #2710
June 26, 2009	Nearly \$1,000,000 transferred to "G5 Currency Fund" in a series of 4 odd amount wire transfers
July 1, 2009	\$200,000 transferred to Associated Bank account #2356

July 6, 2009	\$706,902 transferred to Wells Fargo account #4194
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66. At 11:06 AM on July 9, 2009, Vice President Sarles received a copy of a newspaper article describing the federal lawsuit filed earlier in the week against some of the Ponzi scheme principals. (Ex. 35.) At that time, Vice President Sarles took no action. An hour later, Vice President Simon, did take action, by distributing a copy of the same article to Sarles and Bianchi. (*Id.*) Yet, despite this knowledge, Associated Bank still assisted the Ponzi scheme principals in transferring \$101,000 of investor funds to a beneficiary identified as “Basel Institutional” which Associated Bank deposited into the fictitious Basel Group LLC account #5214 a week later. (Ex. 36)

67. In addition to all of the above, during the life of the scheme, Associated Bank knew that the Ponzi scheme principals were attempting to deposit checks made payable to entities using the term “Crown” or “Basel” but not to the specific account holders at Associated Bank. For example, Associated Bank knew that the Ponzi scheme principals were attempting to deposit a \$75,000 check made payable to “Basel Institutional” and a \$17,000 check made out to “Crown Bank.” (Ex. 37) Again, the suspicious activity raised by these red flags was ignored.

68. Associated Bank, on information and belief, also intentionally and willfully ignored that it was accepting wire transfers for the Crown Forex LLC account #1705 that specifically listed “Crown Forex, SA” with a Swiss address as the recipient of the wire without any inquiry. Bank personnel should have identified these discrepancies during a review of the alerts generated by the Bank’s monitoring systems for these transactions.

69. On February 23, 2012, Associated Bank entered into a Consent Order for its failure to comply with the requirements of the BSA/AML with the Comptroller of the Currency of the United States of America. (Ex. 38) On information and belief, the compliance failures concerned the Ponzi scheme accounts at issue in this Complaint.

COUNT I
AIDING AND ABETTING FRAUD

70. The Receiver incorporates paragraphs 1 through 69 above by reference.

Ponzi Scheme: The Underlying Fraud

71. The Ponzi scheme orchestrated by the Ponzi scheme principals has damaged the Oxford and UBS Entities as a matter of law. Proof of such are the prior proceedings in which Cook pled guilty to fraud, Pettengill pled guilty to fraud, Kiley, Beckman and Durand were found guilty of fraud, and related court opinions clearly articulating that the Oxford and UBS Entities and their creditors have been harmed by the fraud.

Associated Bank Had Actual Knowledge of the Fraud

72. Associated Bank had actual knowledge of the fraud. Associated Bank's actual knowledge of the fraud and its role in it are exemplified by its willingness to execute numerous atypical transactions, its willingness to prepare and circulate misleading and false account documents to avoid detection under the implementing regulations of the BSA/AML, and its willingness to violate both internal and statutory rules and procedures, including the following:

(A) Falsely stating on the account documentation for account #5601 that the business was located in an office Suite #100 even though Associated Bank knew that the business was operated out of a residence that had no office suites.

(B) Falsely stating on the account documentation for account #5601 that it was a “Checking/Money Market” account for use as a “GENERAL OPERATING ACCOUNT” even though Associated Bank knew that the account was to hold investor funds.

(C) Omitting from the account documentation for account #5601 that Kiley was a financial advisor, working from home, and that the intended use of account #5601 was to hold investor funds.

(D) Providing advice to Shadi Swais, Cook and Kiley on how to avoid detection by recommending that an account in the name of the fictitious Crown Forex LLC be opened instead of the foreign domiciled Crown Forex, SA.

(E) Opening the Crown Forex LLC account #1705 without proper documentation.

(F) Falsely stating that the status of Crown Forex LLC had been properly verified on the account application for account #1705 for compliance with the Patriot Act.

(G) Falsely stating on the account documentation for account #1705 that the business was located in an office located at 5413 Nicollet Ave, Ste 14, Minneapolis, Minnesota even though Associated Bank knew that Kiley operated out of a residence, not an office, located on Tiffany Court, Burnsville, MN.

(H) Willfully ignoring that the address provided for the Crown Forex LLC account #1705 was to a rented mailbox located at GreenDog Sports.

(I) Falsely stating on the account documentation for account #1705 that it was a “Checking/Money Market” account even though Associated Bank knew that the account was to hold investor funds to avoid subjecting the account to scrutiny.

(J) Omitting from the account documentation for account #1705 that Kiley was a financial advisor, working from home, and that the intended use of account #1705 was to hold investor funds.

(K) Falsely stating on the “DECLARATION OF NO WRITTEN OPERATING AGREEMENT” that Crown Forex LLC was a Minnesota LLC and then executing the document despite knowing that no verifying documentation had been provided.

(L) Accepting the false GreenDog Sports address on the ODM documentation for the Crown Forex LLC account #1705.

(M) Allowing the Crown Forex LLC account #1705 to remain operational even after the Monitoring Department knew that proper documentation had not been obtained.

(N) Authorizing the transfer of millions in investor funds held in the Crown Forex LLC account #1705 to Cook's own accounts despite having knowledge that the funds in account #1705 were investor funds.

(O) Allowing Cook to transfer millions from the Crown Forex LLC account #1705 to his own accounts despite his lack of signatory authority on account #1705.

(P) Allowing Cook to walk off with \$600,000 in cash of investor funds despite widespread suspicions about Cook, the transaction, and after discovering and then "correcting" an improper transfer of \$1.7 million of investor funds from the Crown Forex LLC account #1705 to Cook's own account made by Vice President Sarles.

(Q) Ignoring transfers of unusual volumes and quantities from the Crown Forex LLC account #1705 to other Associated Bank accounts and to other accounts.

(R) Including false remitter information on over \$3.2 million in cashier's checks drawn from the Crown Forex LLC account #1705.

(S) Assisting in the wiring of millions into the Crown Forex LLC account #1705 despite the knowledge that proper documentation for the account had not been obtained.

(T) Accepting wire transfers into the Crown Forex LLC account #1705 that were intended for Crown Forex, SA.

(U) Accepting checks made payable to other entities such as "Crown Bank" into the Crown Forex LLC account #1705.

(V) Allowing checks to issue from the Crown Forex LLC account #1705 that misleadingly indicated that the funds were from a "Client Disbursement Account."

(W) Allowing checks to issue from the Crown Forex LLC account #1705 that misleadingly indicated the issuer was Associated Bank.

(X) Opening account #5214 to Basel Group LLC without proper documentation.

(Y) Falsely stating that the legitimacy of the Basel Group LLC had been verified on the account application for compliance with the Patriot Act.

(Z) Continuing to allow account #5214 to remain operational even though it was known that proper documentation for the LLC was not obtained.

(AA) Falsely stating on the account documentation for account #5214 that it was a "Checking/Money Market" account even though Associated Bank knew that the account was to hold investor funds.

(BB) Assisting in the transfer of at least \$101,000 in investor funds into account #5214 even with the knowledge that the Ponzi scheme principals were under investigation.

(CC) Accepting checks made payable to other entities such as "Basel Institutional" into account #5214 which was in the name of Basel Group LLC.

(DD) Accepting one or more wire transfers identifying "Basel Institutional" as the beneficiary and then depositing the funds into account #5214 which was in the name of the fictitious Basel Group LLC.

(EE) Improperly transferring ownership of account #1812 to Cook by improperly removing the account's owner, Chris Pettengill, without any authority or authorization to take such action.

(FF) Falsely stating on the account documentation for account #2356 that it was a "Checking/Money Market" account even though Associated Bank knew that the account was to hold investor funds.

73. All of the above mentioned actions and omissions are atypical in the banking industry, which raises an inference that Associated Bank knew of the Ponzi scheme and sought to accommodate it by altering its normal ways of doing business. Taken together, these actions establish that Associated Bank had actual knowledge of the fraudulent activities.

74. In addition, the numerous red flags and atypical transactions that were executed without question or investigation are indications that Associated Bank subjectively knew that there was a high probability of illegal activity and deliberately avoided investigating the matter. Had Associated Bank investigated any of the numerous red flags it had before it as raised by several employees, Associated Bank would have uncovered and prevented the Ponzi scheme from flourishing.

Associated Bank Provided Substantial Assistance to Cook & Kiley

75. The substantial assistance Associated Bank provided to Cook, Kiley and Pettengill allowed the Ponzi scheme to obtain and launder millions in investor funds. Associated Bank provided advice on how the foreign-domiciled Crown Forex, SA could avoid scrutiny by recommending that the Ponzi scheme principals open an account in the name of the fictitious Crown Forex LLC instead of the foreign domiciled Crown Forex, SA. When opening the Crown Forex LLC account #1705, Associated Bank, contrary to policy, did not require proper account opening documentation. In addition, the account opening documentation falsely stated that the legal status of Crown Forex LLC had been verified and the account was a “Checking/Money Market” account even though Associated Bank knew it was to hold investor funds. Moreover, the account documentation failed to include any indication that Kiley was a financial advisor, working from his home, and that the purpose of the account was to hold investor funds.

76. Once the Crown Forex LLC account #1705 was operational, contrary to internal policies, Associated Bank provided further substantial assistance by allowing the

account to remain open even though it was discovered that improper documentation had not been obtained and by not following through with its warning that the account would be frozen unless proper documentation was obtained. Despite knowing about the illegitimacy of account #1705, at least one Associated Bank employee personally transferred millions in investor funds to Cook's personal accounts even with the knowledge that the funds in account #1705 belonged to the investors.

77. Associated Bank also allowed Cook to transfer millions in investor funds out of the Crown Forex LLC account #1705 to his own accounts without being an authorized signatory. The Bank further ignored transactions indicating money laundering, such as large round dollar amounts being transferred between accounts in a matter of days.

78. Even near the end, Associated Bank assisted Cook in stuffing \$600,000 in cash of investor funds from account #1705 into a box and walking out the door despite having discovered numerous red flags associated with the withdrawal, including an improper transfer of \$1.7 million in investment funds made by one of its employees to Cook's own account. Instead of investigating the suspicious transfer, Associated Bank internally "corrected" it so as to provide Cook with the cash.

79. Associated Bank also provided substantial assistance by allowing the Ponzi scheme principals to use Associated Bank's name and address to create a "solid citizen" reputation for the scheme that it would not have had otherwise. Associated Bank allowed

misleading checks to be used that identified a fictitious “Client Disbursement Account” and to misleadingly indicate that the Bank itself was issuing the check.

80. Nor was the assistance limited to account #1705. For the Basel Group LLC account #5214, Associated Bank again allowed an account to be opened to a fictitious entity. As with account #1705, no proper documentation was obtained at opening and the account documentation falsely indicated that the status of the LLC had been properly verified. Again, the account was identified as a “Checking/Money Market” account even though Associated Bank knew the account was to hold investor funds. Moreover, even after learning that the Ponzi scheme principals were under investigation, Associated Bank further assisted in the wiring of investor funds into the account.

81. Associated Bank, by allowing Cook, Kiley and others to maintain fictitious accounts and transfer millions to and from the accounts, perpetuated their ability to continue and expand the Ponzi scheme.

82. Associated Bank’s acts and omissions lacked business justification. Taken together, the facts of this case support a finding that, with profits in mind, Associated Bank aided and abetted the Ponzi scheme.

83. By virtue of Associated Bank’s actions the Oxford and UBS Entities have sustained substantial injury as a result of the monies they now owe the defrauded creditors that forwarded funds to the fictitious accounts. Associated Bank is therefore liable for all damages actually and proximately caused to the Oxford or UBS Entities.

WHEREFORE, the Receiver demands judgment against Associated Bank for (i)

actual compensatory, consequential, incidental, special and exemplary punitive damages in an amount to be proven at trial; (ii) such civil penalties as allowed by law; (iii) pre-judgment and post-judgment interest as allowed by law; and (iv) such other and further legal and equitable relief as the Court deems just and proper.

COUNT II
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

84. The Receiver incorporates paragraphs 1 through 83 above by reference.

85. At all material times, Cook, Kiley and Pettengill were officers, members, and/or directors of the Oxford and/or UBS Entities and as such owed them a fiduciary duty to discharge their duties in good faith, with the care that an ordinarily prudent officer, member or director in a like position would exercise and in a manner reasonably believed to be in the best financial interests of the Oxford and UBS Entities.

86. Cook, Kiley and Pettengill breached the fiduciary duty owed to the Oxford and UBS Entities by using the Oxford or UBS Entities to induce investors to invest in the Currency Program, and subsequently used the investor funds to fuel the Ponzi scheme and to line their own pockets. Cook, Kiley and Pettengill exhibited a willful, fraudulent, reckless and/or negligent disregard for the best financial interest of the Oxford and UBS Entities with no legitimate or justifiable business purpose.

87. The breach of fiduciary duty owed to the entities actually and proximately caused financial injury to the Oxford and/or UBS Entities in an amount to be proven at trial. Associated Bank had actual knowledge of the breach of fiduciary duty and rendered substantial assistance in regard to such breach by providing Cook and Kiley advice on

how to circumvent detection of the BSA/AML and Patriot Act, by allowing Cook and Kiley to open accounts for the fictitious Crown Forex LLC account #1705 and Basel Group LLC account #5214, by allowing Cook and Kiley to maintain the accounts, by assisting in the wiring of investor funds to entities that Associated Bank knew had no authorized legal existence, by authorizing the transfer and actually transferring millions in investor funds from the Crown Forex LLC account #1705, an account Associated Bank knew was to hold investor funds, to Cook's personal accounts and other Ponzi scheme fraud accounts.

88. By virtue of Associated Bank's actions the Oxford and UBS Entities have sustained substantial injury as a result of the monies they now owe the defrauded investors. Associated Bank is therefore liable for all damages actually and proximately caused to the Oxford and UBS Entities.

WHEREFORE, the Receiver demands judgment against Associated Bank for (i) actual compensatory, consequential, incidental, special and exemplary punitive damages in an amount to be proven at trial; (ii) such civil penalties as allowed by law; (iii) pre-judgment and post judgment interest as allowed by law; and (iv) such other and further legal and equitable relief as the Court deems just and proper.

COUNT III
AIDING AND ABETTING CONVERSION

89. The Receiver incorporates paragraphs 1 through 88 above by reference.

90. This is claim seeking damages on the grounds of aiding and abetting Cook and Kiley's conversion of the funds entrusted to the Oxford or UBS Entities for investment purposes.

91. Cook and Kiley willfully interfered with the personal property of the Oxford or UBS Entities, without justification and inconsistent with the rights of those entities which were solely entitled to the use, possession, or ownership of the funds.

92. Cook and Kiley wrongfully asserted dominion and control over millions of dollars of investment funds entrusted to the Oxford or UBS Entities and converted those funds for purposes other than the intended use, such as the purchase of property in Panama, interests in foreign financial entities, and various other unauthorized transfers to third parties.

93. Associated Bank had actual knowledge of the conversion and rendered substantial assistance in regard to such conversion by providing Cook and Kiley advice on how to circumvent detection by the BSA/AML and Patriot Act, by allowing Cook and Kiley to open accounts for the fictitious Crown Forex LLC account #1705 and Basel Group LLC account #5214, by allowing Cook and Kiley to maintain the accounts, by assisting in the wiring of investment funds to an entities that Associated Bank knew had no authorized legal existence, by authorizing the transfer and actually transferring millions in investment funds from the Crown Forex LLC account #1705—an account

Associated Bank knew was to hold only investment funds—to other accounts for Cook and Kiley’s personal gain.

94. By virtue of Associated Bank’s actions, the Oxford and UBS Entities have sustained substantial injury as a result of the monies they now owe third party creditors. Associated Bank is therefore liable for all damages actually and proximately caused to the Oxford or UBS Entities.

WHEREFORE, the Receiver demands judgment against Associated Bank for (i) actual compensatory, consequential, incidental, special and exemplary punitive damages in an amount to be proven at trial; (ii) such civil penalties as allowed by law; (iii) pre-judgment and post-judgment interest as allowed by law; and (iv) such other and further legal and equitable relief as the Court deems just and proper.

COUNT IV
AIDING AND ABETTING FALSE REPRESENTATIONS AND OMISSIONS

95. The Receiver incorporates paragraphs 1 through 94 above by reference.

96. This is an action seeking damages on the grounds of aiding and abetting the false representations and omissions made concerning the Crown Forex LLC and Basel Group LLC accounts. The wiring instructions issued by the Oxford and UBS Entities created the falsehood that investors were depositing and wiring funds into bank accounts held in the name of legitimate, existing entities, with the understanding that the funds were to be used in the Currency Program for trading by Crown Forex, SA in Switzerland. In addition, the checks issued from account #1705 created the impression that Associated

Bank was issuing the checks from a “Client Disbursement Account,” which was false and misleading.

97. Associated Bank knew the above representations were false. Associated Bank knew that Crown Forex LLC and Basel Group LLC did not exist. It also knew that the funds were not being transferred to Crown Forex, SA for use in the Currency Program. Despite this knowledge, Associated Bank continued to assist investors in transferring funds into the accounts. Moreover, despite the knowledge that Crown Forex LLC did not exist, Associated Bank allowed hundreds of misleading checks to be issued from account #1705 allowing the false impression to be created that the Ponzi scheme was a legitimate enterprise.

98. By virtue of Associated Bank’s actions and omissions, the Oxford and UBS Entities have sustained substantial injury as a result of the monies they now owe the defrauded creditors as a result of their false statements and omissions. Associated Bank is therefore liable for all damages actually and proximately caused to the Oxford or UBS Entities.

WHEREFORE, the Receiver demands judgment against Associated Bank for (i) actual compensatory, consequential, incidental, special and exemplary punitive damages in an amount to be proven at trial; (ii) such civil penalties as allowed by law; (iii) pre-judgment and post-judgment interest as allowed by law; and (iv) such other and further legal and equitable relief as the Court deems just and proper.

DEMAND FOR A JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial as to all issues so triable.

Dated: April 16, 2013

Respectfully submitted,

CARLSON, CASPERS, VANDENBURGH,
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