

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

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U.S. Commodity Futures Trading Commission, )  
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 Plaintiff, )  
 )  
 v. )  
 )  
 Trevor Cook d/b/a Crown Forex, LLC, Patrick )  
 Kiley d/b/a Crown Forex, LLC, Universal )  
 Brokerage FX and Universal Brokerage FX )  
 Diversified, Oxford Global Partners, LLC, )  
 Oxford Global Advisors, LLC, Universal )  
 Brokerage FX Advisors, LLC f/k/a UBS )  
 Diversified FX Advisors, LLC, Universal )  
 Brokerage FX Growth, L.P. f/k/a UBS )  
 Diversified FX Growth L.P., Universal )  
 Brokerage FX Management, LLC f/k/a UBS )  
 Diversified FX Management, LLC and UBS )  
 Diversified Growth, LLC, )  
 )  
 Defendants. )

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**No. 09 cv 3332 (MJD/FLN)**

**Hon. Michael J. Davis**

**REQUEST FOR ENTRY OF DEFAULT**

Pursuant to Federal Rule of Civil Procedure 55(a), Plaintiff Commodity Futures Trading Commission (“CFTC”) hereby requests that the Clerk of the U.S. District Court for the District of Minnesota enter an order of default against Defendant Patrick Kiley (“Kiley”) for failure to answer, plead, or otherwise respond to the CFTC’s Complaint in this matter within the time permitted by the Federal Rules of Civil Procedure. In support of its request, the CFTC states as follows:

1. On November 23, 2009, the CFTC filed a Complaint against Defendant Kiley and others alleging violations of the Commodity Exchange Act (“Act”), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII, §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. § 1 *et seq.*, arising from Kiley’s solicitation of customers to trade off-exchange foreign exchange (“forex”) contracts. At the same time, the CFTC filed a Motion for Preliminary Injunction and a Motion for *Ex Parte* Statutory Restraining Order seeking to enjoin Kiley from committing future violations of the Act (Dkt. #2, 3). The Court entered an *Ex Parte* Statutory Restraining Order against Kiley on November 23, 2009 (Dkt. #21).

2. The CFTC served Kiley with a copy of its Complaint by electronic mail on November 25, 2009, through his attorney, Peter Wold. (*See* Nov. 25, 2009, Gradman Email, a copy of which is attached hereto as Exhibit A.) On December 7, 2009, Kiley signed a Consent to Preliminary Injunction prohibiting him from committing further violations of the Act (Dkt. #49). Based on Kiley’s Consent, the Court entered an Agreed Order for Preliminary Injunction and Other Ancillary Relief against Kiley on December 8, 2009 (Dkt. #75).

3. On November 23, 2010, Kiley filed a Motion to Dismiss the CFTC’s Complaint (Dkt. #547). On March 10, 2011, Magistrate Judge Franklin L. Noel issued a Report and Recommendation that Kiley’s Motion be denied, and posted notice of the Report and Recommendation on the District of Minnesota’s CM/ECF electronic case filing system (Dkt. #651). Kiley did not file an objection, or otherwise respond, to

Magistrate Judge Noel's Report and Recommendation. On April 11, 2011, this Court entered an Order denying Kiley's Motion to Dismiss and posted notice of its Order on the District of Minnesota's CM/ECF electronic case filing system (Dkt. #687).

4. Pursuant to Federal Rule of Civil Procedure 12(a)(4)(A), Kiley's response to the CFTC's Complaint was due within 14 days after Kiley received notice of the Court's denial of his Motion to Dismiss, on or before April 25, 2011. Fed. R. Civ. P. 12(a)(4)(A). As of the date of this request, however, Kiley has not filed an answer or otherwise responded to the CFTC's Complaint, nor has he sought an extension of time to answer or respond. (*See generally* Docket Report, *CFTC v. Trevor Cook et al.*, Case No. 09cv3332 (MJD/FLN).)

5. Rule 55(a) of the Federal Rules of Civil Procedure provides, "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a); *see also United States v. Henchen*, No. 07-4083, 2008 WL 2954759, at \*2 (D. Minn. June 6, 2008) (same).

6. On information and belief, Kiley is not a minor, legally incompetent or a member of the military on active duty. Because he has failed to answer or otherwise defend against the Complaint within the time permitted by Federal Rule of Civil Procedure 12(a)(4)(A), default pursuant to Rule 55(a) is appropriate.

WHEREFORE, the CFTC respectfully requests that the Clerk enter an order of default against Defendant Kiley.

Dated: May 6, 2011

Respectfully submitted,

/s/ David Slovic

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