

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,
Plaintiff,**

v. Case No. 09-cv-3333 (MJD/FLN)

**TREVOR G. COOK, et al.,
Defendants,**

**R.J. ZAYED,
Receiver.**

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,
Plaintiff,**

v. Case No. 11-cv-574 (MJD/FLN)

**JASON BO-ALAN BECKMAN, et al.,
Defendants,**

**R.J. ZAYED,
Receiver.**

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S
MOTION FOR ENTRY OF CONSENT JUDGMENTS
AND MEMORANDUM IN SUPPORT**

Plaintiff United States Securities and Exchange Commission (“SEC”) respectfully submits this motion and memorandum in support, pursuant to the Federal Rules of Civil Procedure and the Local Rules of this Court, seeking the entry of final judgments by consent against the following:

1. Defendant Trevor G. Cook

2. Defendant Oxford Global Advisors, LLC
3. Defendant Oxford Global Partners, LLC
4. Defendant The Oxford Private Client Group, LLC
5. Defendant UBS Diversified Growth, LLC
6. Defendant Universal Brokerage FX Management, LLC
7. Relief Defendant Basel Group, LLC
8. Relief Defendant Crown Forex, LLC
9. Relief Defendant Market Shot, LLC
10. Relief Defendant PFG Coin and Bullion
11. Relief Defendant Oxford FX Growth, L.P.
12. Relief Defendant Oxford Global FX, LLC
13. Relief Defendant Oxford Developers, S.A.
14. Relief Defendant UBS Diversified FX Advisors, LLC
15. Relief Defendant UBS Diversified FX Growth, L.P.
16. Relief Defendant UBS Diversified FX Management, LLC

The Defendants and Relief Defendants listed above have consented to entry of the proposed final judgments without admitting or denying the allegations in the SEC's Complaints. Defendant Trevor Cook has consented personally. The other Defendants and Relief Defendants listed above have consented through the Receiver, who, pursuant to Orders of this Court, controls them and is empowered to settle all claims against them, including the SEC's claims.

Entry of the proposed consent judgments, together with the relief sought in the two other motions filed simultaneously herewith, would completely resolve all outstanding claims in the SEC's two companion cases, *SEC v. Trevor Cook, et al.*, 09-cv-3333, and *SEC v. Jason Bo-Alan Beckman, et al.*, 11-cv-574. The only remaining issues would be the Receiver's ongoing collection and distribution efforts. In support of its motion, the SEC states:

BACKGROUND

1. The SEC filed *SEC v. Trevor G. Cook, et al.*, 09-cv-3333, on November 23, 2009. The SEC's Complaint alleged that from at least July 2006 through July 2009, Cook, and others acting in concert with him, raised at least \$191 million from at least 1,000 investors through the fraudulent, unregistered offer and sale of investments in a purported foreign currency trading venture. The Complaint alleged that Cook and his associates misled investors about risks, returns, and the uses to be made of the investors' money. The Complaint further alleged that Cook and his associates acted through multiple companies, several of which were also named as Defendants or Relief Defendants. The Court entered a preliminary injunction, imposed an asset freeze, and appointed a Receiver.

2. After filing *SEC v. Cook*, the SEC continued to investigate the scheme; and on March 7, 2011, the SEC filed its complaint in *SEC v. Jason Bo-Alan Beckman, et al.*, 11-cv-574. The SEC's Complaint in that case charged Beckman and entities he controlled, including The Oxford Private Client Group, LLC, with participating in the same fraudulent scheme that underlay the allegations in *SEC v. Cook*. The Court entered

a preliminary injunction, imposed an asset freeze, and appointed the same Receiver appointed in *SEC v. Cook*.

3. The most recent Court of Appeals decision addressing the standard to be employed by a court when considering whether to enter a consent, neither-admit-nor-deny settlement in an SEC enforcement action is the Second Circuit's decision in *SEC v. Citigroup Global Markets*, 752 F.3d 285 (2d Cir. 2014). That decision pointed to pre-existing precedent and clarified that the standard to be applied is whether the proposed consent decree is "fair and reasonable," with the additional requirement that "the public interest would not be disserved." *Id.* at 294. "Absent a substantial basis in the record for concluding that the proposed consent decree does not meet these requirements, the district court is required to enter the order." *Id.* The proposed judgments herein satisfy the *Citigroup* standard.

PERMANENT INJUNCTIONS

4. The SEC is authorized to seek a permanent injunction upon a proper showing that a person has violated the federal securities laws. 15 U.S.C. §§ 77t(b), 78u(d), 80b-9(d). To obtain injunctive relief, the SEC must establish (1) that a violation has occurred and (2) that there is a reasonable likelihood of future violations. *SEC v. Comserv Corp.*, 908 F.2d 1407, 1412 (8th Cir. 1990) (citing *SEC v. Commonwealth Chem. Sec., Inc.*, 574 F.2d 90, 99 (2d Cir.1978)). Because SEC injunctive actions are created by statute, there is no need to find irreparable injury. *SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 808 (2d Cir. 1975).

5. Here, the settling Defendants consent to the entry of permanent injunctions against them. The facts alleged in the SEC’s Complaints, which are not denied, set forth a *prima facie* showing that Defendants Cook, Oxford Global Advisors, Oxford Global Partners, UBS Diversified Growth, Universal Brokerage FX Management, and The Oxford Private Client Group violated the charged provisions by engaging in a long-running scheme to offer and sell investment interests in their foreign currency trading venture through fraudulent means and without registration. *See* Complaint in *SEC v. Cook*, Doc. # 1 at ¶¶ 24-248; Complaint in *SEC v. Beckman*, Doc. # 1 at ¶¶ 25-212.

6. In assessing whether there is a likelihood of future violations, courts consider “the degree of the defendant’s scienter, the isolated or recurrent nature of the violation, the defendant’s recognition that his conduct was wrongful, the likelihood that the defendant’s professional occupation will allow for future violations, and the defendant’s sincerity in assuring against future violations.” *SEC v. Quan*, 2014 U.S. Dist. LEXIS 131618 (D. Minn.) at *30-31. The undenied allegations of the SEC’s Complaints set forth a *prima facie* showing that the Defendants acted deliberately, knowingly, and repeatedly over the span of several years. In addition, the Complaints in these cases, combined with the related criminal proceedings, depict a situation lacking in either recognition of wrongdoing or assurance against future violations.

**DISGORGEMENT AND PREJUDGMENT INTEREST
AGAINST DEFENDANTS**

7. Disgorgement is an equitable remedy with a dual purpose: to “deprive a wrongdoer of his unjust enrichment and to deter others from violating securities laws.”

SEC v. Teo, 746 F.3d 90, 2014 WL 503455, *11 (3d Cir. 2014) (quoting *SEC v. First City Fin. Corp.*, 890 F.2d 1215, (D.C. Cir. 1989)); see also, *SEC v. O'Hagan*, 901 F. Supp. 1461, 1468 (D. Minn. 1995). Exactitude is not required; “disgorgement need only be a reasonable approximation of profits causally connected to the violation.” *First City Fin. Corp.*, 890 F.2d at 1231. Once the SEC gives the Court a reasonable approximation of disgorgement, the burden shifts to the Defendants to show that the SEC’s estimate is not reasonable. *Teo*, 2014 WL 503455 at *11. Any risk of error or uncertainty falls on the wrongdoer. *SEC v. Patel*, 61 F.3d 137, 140 (2d Cir. 1995).

8. In addition to disgorging Defendants’ ill-gotten gains, the Court may also order payment of prejudgment interest on those gains to prevent the Defendants from getting what amounts to an interest-free loan due to their fraud. *SEC v. Lawton*, No. 09-cv-368, 2011 WL 494888, *5 (D. Minn. Feb. 7, 2011); *SEC v. Brown*, 06-cv-1213, 2010 WL 1780144, at *2 (D. Minn. April 30, 2010). Both the SEC and District Courts routinely calculate prejudgment interest using the rate applied by the Internal Revenue Service (“IRS”) for the underpayment of federal income tax. See *id.*; *SEC v. First Jersey Securities, Inc.*, 101 F.3d 1450, 1476 (2d Cir. 1996) (noting use of IRS underpayment rate in calculating prejudgment interest).

9. Courts have broad discretion to impose joint and several liability where—as here—“two or more individuals or entities collaborate or have a close relationship in engaging in the violations of the securities laws.” *Platforms Wireless.*, 617 F.3d 1072, 1098 (9th Cir. 2010); see also *SEC v. Hughes Cap. Corp.*, 124 F.3d 449, 455 (3d Cir. 1997); *SEC v. Calvo*, 378 F.3d 1211, 1215-16 (11th Cir. 2004). The proposed final

judgments impose joint and several liability for the full amounts of disgorgement and prejudgment interest.

10. The proposed final judgments impose disgorgement of \$143,228,742 plus prejudgment interest of \$12,699,781, for a total of \$155,928,523, on a joint and several basis, against Defendants Cook, Oxford Global Advisors, Oxford Global Partners, UBS Diversified Growth, Universal Brokerage FX Management, and The Oxford Private Client Group.

11. The disgorgement figure of \$143,228,742 represents the amount of money raised but not returned to the investors. Over the course of their fraud, the Defendants and their associates took in a total of \$193,103,061 from their investor-victims.

(Declaration of Luz M. Aguiar, filed in Support of SEC's Motion for Summary Judgment against Defendants Kiley and Beckman ("Aguilar Dec."), ¶ 11 and Ex. 4.) The Defendants and their associates returned \$49,874,319 of that money back to investors, leaving the Defendants and their associates with ill-gotten gains totaling \$143,228,742. (*Id.*) The prejudgment interest amount of \$12,699,781 was calculated using the IRS interest rates for underpayments. (*Id.*, ¶ 13, Ex. 5.)

12. The consent judgments proposed through this motion, together with the judgments sought against Defendants Kiley and Beckman in the SEC's simultaneous motion for summary judgment against those two Defendants, would hold all the Defendants in the two SEC cases jointly and severally liable for the full amount of the ill-gotten gains derived from their fraudulent scheme plus prejudgment interest.

**DISGORGEMENT AND PREJUDGMENT INTEREST
AGAINST RELIEF DEFENDANTS**

13. The Relief Defendants subject to the Receivership have also consented to the entry of final judgments. The SEC has only sought disgorgement and prejudgment interest from the Relief Defendants controlled by the Receiver. The SEC has not alleged that those Relief Defendants violated the law, but rather that they received ill-gotten gains from the Defendants' violations.

14. The proposed final judgments would order each Relief Defendant to disgorge the amount of ill-gotten gains traced to it, together with prejudgment interest on that amount, as follows:

Relief Defendant's Name	Disgorgement	Pre-Judgment Interest	TOTAL
Basel Group, LLC	402,625	3,379	406,004
Crown Forex, LLC	41,298,287	1,659,841	42,958,128
Market Shot, LLC	9,455,884	1,296,673	10,752,557
Oxford Developers, S.A.	140,000	1,871	141,871
Oxford FX Growth, L.P.	34,368,701	2,519,575	36,888,276
Oxford Global FX, LLC	8,345,650	2,519,575	10,865,225
PFG Coin and Bullion	2,796,361	384,900	3,181,261
UBS Diversified FX Advisors, LLC	1,000	214	1,214
UBS Diversified FX Growth, LLC	4,700,000	721,646	5,421,646
UBS Diversified FX Management, LLC	1,000	214	1,214

DISMISSAL OF PRAYER FOR CIVIL PENALTIES

15. The SEC requests the Court to dismiss the SEC's prayers for civil penalties against Defendant Cook and Defendant The Oxford Private Client Group.

16. Defendant Cook has been sentenced to a lengthy prison sentence. As a result, the imposition of a civil penalty against Cook would secure no additional benefit for the public interest.

17. The Oxford Private Client Group is defunct. The Receiver has consented to a final judgment imposing disgorgement and prejudgment interest against The Oxford Private Client Group. That proposed judgment will enable the Receiver to continue his collections efforts. A civil penalty would add no additional relief for the public benefit.

CONCLUSION

18. The proposed final judgments fully resolve all of the SEC's claims against the consenting Defendants and Relief Defendants. The terms of the proposed settlements are fair and understandable; there has been no collusion in reaching the settlements; and entry of the proposed judgments would serve public interest. For these reasons, the Court should enter the proposed judgments. *See Citigroup Global Markets*, 752 F.3d 285 (2d Cir. 2014).

WHEREFORE, the SEC requests that the Court grant this motion and enter the proposed final judgments against the consenting Defendants and Relief Defendants.

Dated: March 17, 2015

Respectfully submitted,

s/John E. Birkenheier
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