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CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY: 

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

v.

IB CAPITAL FX, LLC (A/K/A IB CAPITAL FX (NZ)
LLP) DBA IB CAPITAL, MICHEL GEURKINK, AND
EMAD ECHADI,

Defendants.

Case No. 1:15-cv-01022-LY

**ORDER OF PRELIMINARY INJUNCTION
AND OTHER EQUITABLE RELIEF**

On November 9, 2015, Plaintiff, U.S. Commodity Trading Commission (“Plaintiff” or “Commission”) filed a Complaint for Permanent Injunction, Civil Penalties, and Other Equitable Relief against Defendants Michel Geurkink (“Geurkink”) and Emad Echadi (“Echadi”), individually and as the agents of IB Capital FX, LLC (a/k/a IB Capital FX (NZ) LLP) dba IB Capital (“IB Capital”) (collectively, the “Defendants”) for violations of the Commodity Exchange Act, as amended (“Act”) 7 U.S.C. §§ 1 *et seq.* and the Regulations promulgated thereunder. Complaint, Docket Entry (“D.E.”) 1. On November 17, 2015, Plaintiff’s filed a Motion for Preliminary Injunction and Other Equitable Relief (“Motion”),

D.E. 7. Plaintiff effectuated service of the Complaint and Motion on all of the Defendants and the Defendants filed an Answer on December 22, 2015. Answer, D.E. 8. The Court set a hearing on the Motion on Thursday, January 14, 2016. Order, D.E. 9. The Defendants filed a Response to the Motion on Saturday, January 9, 2016. Response, D.E. 10. After a hearing on the merits, the Court has considered all of the pleadings, declarations, exhibits and memorandum filed in support of the Motion and the Response thereto, and finds that:

1. The Court possesses jurisdiction over the parties and over the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012).

2. Venue properly lies in this District, pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012).

3. Each Defendant was served with a copy of a summons, Complaint and all related filings, including Plaintiff's Motion for Preliminary Injunction.

4. There is good cause to believe that Defendants have engaged in, are engaging in and are about to engage in certain unlawful conduct, including, but not limited to: engaging in the offering of agreements, contracts or transactions in off-exchange margined retail foreign currency ("forex") to retail customers who were not eligible contract participants ("ECPs"), while Defendants were not registered as required with the Commission, in violation of the registration provisions of the Act and Commission Regulations ("Regulation"), namely Section 2(c)(2)(C)(iii)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) (2012); and Regulation 5.3(a)(6)(i) and 5.3(a)(6)(ii), 17 C.F.R. § 5.3(a)(6)(i), (ii) (2012).

5. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for customers in the form of monetary redress will

occur from the sale, transfer, assignment, or other disposition by Defendants of assets or records unless Defendants are immediately restrained and enjoined by Order of the Court.

6. There is good cause for the Court to impose a restraining order prohibiting Defendants and their agents, servants, employees, attorneys, and other persons who are in active concert or participation with them, from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property owned, controlled, managed, or held by or on behalf of, or for the benefit of Defendants.

7. There is good cause for the Court to impose a restraining order prohibiting Defendants and their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with the Defendants, including any successor thereof, from destroying records and/or denying agents of the Commission access to inspect and copy records to ensure that Commission representatives have immediate and complete access to all such books and records.

8. Good cause exists to require an accounting to determine the location and disposition of all customer funds.

9. Absent the entry of this Preliminary Injunction order, the Defendants are likely to dissipate or transfer assets and destroy business records.

10. Good cause exists for the appointment of a Receiver to take control of all assets owned, controlled, managed or held by, on behalf of, or for the benefit of Defendants (“Defendants’ Assets”) in order to preserve assets, investigate and determine customer claims, determine unlawful proceeds retained by Defendants and amounts due to customers as a result of Defendants’ alleged violations, and distribute funds under the Court’s supervision.

11. Good cause exists to order repatriation of assets controlled by Defendants to assure payment of restitution and disgorgement as authorized and for the benefit of customers.

12. Weighing the equities and considering the Commission's likelihood of success in its claims for relief, the issuance of a preliminary injunction is in the public interest.

I.

DEFINITIONS

IT IS HEREBY ORDERED that:

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

13. "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including but not limited to chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, receivables, contracts, insurance policies, and all cash, in the United States or transferred to the United States or its territories.

14. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, but is not limited to, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonable usable form. A draft or non-identical copy is a separate document within the meaning of the term. "Document" is further defined as any document which is associated in any manner with the acts alleged by the Plaintiff in the Complaint filed herein.

15. The term "Defendants" refers to IB Capital, Geurkink, Echadi, individually and as the agents of IB Capital, and any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee, or attorney of any of the Defendants, and any person who

receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with any of the Defendants.

II.

PRELIMINARY INJUNCTIVE RELIEF

IT IS HEREBY ORDERED that:

16. Defendants, their officers, agents, servants, employees, successors, assigns, and/or attorneys, and all persons in active concert or participation with the Defendants who receive actual notice of this Order by personal service or otherwise, are hereby restrained, enjoined and prohibited until further order of this Court, from directly or indirectly:

A. For Defendant IB Capital, from acting as a retail foreign exchange dealer (“RFED”), as that term is defined in Regulation 5.1(h), 17 C.F.R. § 5.1(h) (2014), and from soliciting or accepting agreements, contracts or transactions in forex from persons who are not ECPs in connection with leveraged, margined or financed agreements, contracts or transactions in forex as the counterparty to each agreement, contract or transaction in forex, without being registered as an RFED, in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) (2012); and Regulation 5.3(a)(6)(i), 17 C.F.R. § 5.3(a)(6)(i) (2012).

B. For Defendants Geurkink and Echadi, from being associated with an RFED as a partner, officer or employee thereof, as defined in Regulation 5.1(h)(2), 17 C.F.R. § 5.1(h)(2) (2014), and from soliciting or accepting retail forex customers’ orders; or supervising any person or persons so engaged, without being registered as an associated person of an RFED, in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, 7 U.S.C.

§ 2(c)(2)(C)(iii)(I)(aa) (2012); and Regulation 5.3(a)(6)(ii), 17 C.F.R. § 5.3(a)(6)(ii) (2012).

17. Defendants, their officers, agents, servants, employees, successors, assigns, and/or attorneys, and all persons in active concert or participation are hereby restrained, enjoined and prohibited until further order of this Court, from directly or indirectly, acting within the purview of the statutes and regulations alleged by the Plaintiff to have been violated herein for the purpose of:

- a. Trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(40) of the Act, as amended, 7 U.S.C. § 1a(40) (2012);
- b. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2014) for their own personal account or for any account in which they have a direct or indirect interest;
- c. Having any commodity futures, options on commodity futures, commodity options, security futures products, forex contracts and/or swaps (as that term is defined in Section 1a(47) of the Act, as amended, and as further defined by Regulation 1.3, 17 C.F.R. §1.3), traded on their behalf;
- d. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, forex contracts, and/or swaps (as that term is defined in Section 1a(47) of the Act, as amended, and as further defined by Regulation 1.3, 17 C.F.R. 1.3);

- e. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, forex contracts, and/or swaps (as that term is defined in Section 1a(47) of the Act, as amended, and as further defined by Regulation 1.3, 17 C.F.R. 1.3);
- f. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012); and/or
- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2012)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a) registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2012).

III.

ORDER AGAINST TRANSFER, DISSIPATION, AND DISPOSAL OF ASSETS

IT IS HEREBY ORDERED that:

18. Defendants, their officers, agents, servants, employees, successors, assigns, and/or attorneys, and all persons in active concert or participation with the Defendants who receive actual notice of this Order by personal service or otherwise, are restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, including those held in the name of Defendants within the United States or transferred

thereto, or as otherwise ordered by the Court. The assets affected by this paragraph shall apply only to assets existing as of the effective date of this Order.

19. Defendants and their agents, servants, employees, attorneys, and persons in active concert or participation with Defendants who receive actual notice of this Order by personal service except as otherwise ordered by this Court, are restrained and enjoined from directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, converting, withdrawing, or otherwise disposing of any of Defendants' assets as defined herein, or as otherwise ordered by the Court. The assets affected by this paragraph shall include assets existing as of the date of this Order.

20. Defendants are restrained and enjoined from directly or indirectly opening or causing to be opened any safe deposit boxes titled in the name or subject to access by the Defendants.

21. This Court will entertain an application by Defendants for reasonable and necessary living expenses and attorneys' fees upon proper written submission. Proper submission requires that Defendants file such application under oath with the Clerk of the Court and set forth in detail, fully substantiated by all relevant documentation, the amount of funds necessary to pay reasonable and necessary living expenses, a description of the expenses for which those funds are to be applied, a description of the assets sought to be used to pay such expenses, and a description of the derivation of such assets. The Commission may object or otherwise respond to such application.

22. The Court finds that the Fifteen Thousand Dollars (\$15,000) paid by Defendants to the Law Offices of James W. George are reasonable and attorneys' fees and are properly payable to defense counsel herein.

IV.

DEFENDANTS' FINANCIAL AND OTHER ACCOUNTS

IT IS ORDERED, pending further Order of this Court, that in regard to any financial or brokerage institution, business entity, or person that holds, controls, or maintains custody of any Defendants' asset or account, or account established by Defendants on behalf of any other entity or person, including a commodity pool, accounts or assets, or has held, controlled, or maintained custody of any account or asset of the Defendant at any time from January 1, 2012 to September 1, 2015:

23. Defendants and all other persons working in concert with them are restrained and prohibited from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such asset (other than to margin existing futures or securities positions) except as directed by further order of the Court, provided that any Receiver appointed by the Court may, in the execution of his or her duty to preserve the value of any account or asset controlled or managed by Defendants on behalf of another person, either:

- a. liquidate any futures or securities positions held, controlled or managed by Defendants, or,
- b. engage in such transactions as deemed necessary to manage the risk associated with any open futures or securities position held, controlled or managed by Defendants.

24. Defendants and all other persons working in concert with them are restrained and prohibited from accessing any safe deposit box that is: (a) titled in the name of the Defendants, either individually or jointly; or (b) otherwise subject to access by the Defendants;

25. For all accounts opened by Defendants and/or persons working in concert with them during the period January 1, 2012 to September 1, 2015, Defendants and all other persons working in concert with them shall provide counsel for the Commission, within fifteen (15) business days of the date of this Order, a statement setting forth: (a) the identification number of each and every such account or asset titled in the name, individually or jointly, of the Defendants, or held on behalf of, or for the benefit, of the Defendants; (b) the balance of each such account, or a description of the nature and value of such asset as of the close of business on the date of this Order, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and (c) the identification and location of any safe deposit box(s) that is either titled in the name, individually or jointly, of the Defendants or is otherwise subject to access by the Defendants; and

26. Upon request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.

V.

APPOINTMENT OF RECEIVER

27. **Guy M. Hohmann** of Austin, Texas (“Receiver”) is appointed temporary Receiver for the Defendants’ assets and the assets of any affiliates or subsidiaries of any Defendant, with the full powers of an equity receiver. The Receiver shall be the agent of this Court in acting as Receiver under this Order; as such, the Receiver is not required to post a bond.

28. The Receiver is directed and authorized to accomplish the following regarding assets within the United States, assets that may be transferred to the United States, and/or business operations within the United States or directed at United States customers:

- a. Assume full control of the corporate Defendants and any business entities owned by any Defendant by removing any officer, independent contractor, employee, or agent of a corporate defendant, from control and management of the affairs of the corporate defendant and any business entities owned by any Defendant;
- b. Take exclusive custody, control, and possession of all the funds, property, mail and other assets of, in the possession of, or under the control of the Defendants, wherever situated. The Receiver shall have full power to sue for, collect, receive and take possession of all goods, chattels, rights, credits, moneys, effects, land, leases, books, records, work papers, and records of accounts, including computer-maintained information, and other papers and documents of the Defendants, including documents related to customers or clients whose interest are now held by or under the direction, possession, custody or control of the Defendants;
- c. Take all steps necessary to secure the residential and business premises of the Defendants;
- d. Preserve, hold and manage all receivership assets, and perform all acts necessary to preserve the value of those assets, in order to prevent any loss, damage or injury to Defendants' customers or clients;

- e. Prevent the withdrawal or misapplication of funds entrusted to the Defendants and otherwise protect the interests of customers, clients, or investors;
- f. Manage and administer the assets of the Defendants by performing all acts incidental thereto that the Receiver deems appropriate, including hiring or dismissing any and all personnel or suspending operations;
- g. Collect all money owed to the Defendants;
- h. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal or foreign court necessary to preserve or increase the assets of the Defendants or to carry out his or her duties pursuant to this Order;
- i. Choose, engage and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities under the authority granted by this Order;
- j. Issue subpoenas to obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate;
- k. Open one or more bank accounts as designated depositories for funds of the Defendants. The Receiver shall deposit all funds of the Defendants in such designated accounts and shall make all payments and disbursements from the receivership estate from such accounts; and

1. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Defendants prior to the date of entry of this Order, except for payments that the Receiver deems necessary or advisable to secure assets of the Defendants.

29. The Defendants and all other persons or entities served with a copy of this order shall cooperate fully with and assist the Receiver. This cooperation and assistance shall include, but not be limited to, providing any information to the Receiver that the Receiver deems necessary to exercising the authority; providing any password required to access any computer or electronic files in any medium; and discharging the responsibilities of the Receiver under this Order, and advising all persons who owe money to the Defendants that all debts should be paid directly to the Receiver.

30. Except by leave of the Court, during the pendency of the receivership ordered herein, the Defendants and all other persons and entities be and hereby are stayed from taking any action to establish or enforce any claim, right or interest for, against, on behalf of, in, or in the name of, the Defendants, the Receiver, receivership assets, or the Receiver's duly authorized agents acting in their capacities as such, including but not limited to, the following actions:

- a. Commencing, prosecuting, litigating or enforcing any suit, except that actions may be filed to toll any applicable statute of limitations;

- b. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, property of the Defendants or any property claimed by the Defendants, or attempting to foreclose, forfeit, alter

or terminate any of the Defendants' interests in property, whether such acts are part of a judicial proceeding or otherwise;

c. Using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon any property, wherever located, owned by or in the possession of the Defendants or the Receiver, or any agent of the Receiver; and

d. Doing any act or thing to interfere with the Receiver taking control, possession or management of the property subject to the receivership, or to in any way interfere with the Receiver or the duties of the Receiver; or to interfere with the exclusive jurisdiction of this Court over the property and assets of the Defendants.

e. This paragraph does not stay the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

31. Within ninety (90) days of the date of this Order, the Receiver shall file with this Court and serve the Commission a report outlining the steps taken to identify customers, marshal assets, determine the amount invested by each customer, and the portion of assets available to pay back customers. This report shall also include a statement as to the estimated time it will take to distribute available assets to customers and wind up the receivership.

32. The Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by, or in the possession or control of, or which may be received by the

Defendants. The Receiver shall file with the Court and serve on the parties, including Plaintiff Commission, periodic requests for the payment of such reasonable compensation, with the first such request filed no more than ninety (90) days after the date of this Order. Plaintiff Commission may object to any part of a request within thirty (30) calendar days of service of a request. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

VI.

ACCOUNTING AND TRANSFER OF FUNDS AND DOCUMENTS

IT IS FURTHER ORDERED that within thirty (30) business days of the date of this Order, the Defendants shall:

33. Provide the Commission with a full accounting of all Defendants' funds, documents, and assets, including those outside of the United States, from January 1, 2012, to September 1, 2015, except those funds which are subject to an assertion of self-incrimination privilege pursuant to the Fifth Amendment to the Constitution of the United States by Defendants Geurkink and/or Echadi. Any such assertion by Defendants Geurkink and/or Echadi shall be in writing and shall include a privilege log to be immediately submitted to the Court for *in camera* review;

34. To the extent that any of Defendants' Assets are currently restrained by civil and/or criminal authorities in the Kingdom of the Netherlands or elsewhere, Defendants shall specifically identify all such assets and the civil and/or criminal authority restraining such assets in the accounting ordered herein so that the Commission and the Receiver may coordinate with said authorities to the extent possible; and

35. Provide the Commission and Receiver access to all records of the Defendants held by financial institutions located outside the territorial United States by signing the Consent to

Release of Financial Records attached to this Order, within fifteen (15) days of the date of this Order.

VII.

MAINTENANCE OF BUSINESS RECORDS

IT IS FURTHER ORDERED that:

36. Defendants and all persons or entities who receive notice of this Order by personal service or otherwise, are restrained and enjoined from directly or indirectly destroying, mutilating, erasing, altering, concealing or disposing of, in any manner, directly or indirectly, any documents that relate to the business practices or business or personal finances of the Defendants.

VIII.

INSPECTION AND COPYING OF BOOKS AND RECORDS

IT IS FURTHER ORDERED that:

37. Subject to the Court's ruling on any privilege log submitted pursuant to the provisions of Paragraph 33 of the Order, Representatives of the Commission be immediately allowed to inspect the books, records, and other documents of the Defendants, and their agents including, but not limited to, electronically stored data, tape recordings, and computer discs, wherever they may be situated and whether they are on the persons of the Defendants, or others, and to copy said documents, data and records, either on or off the premises where they may be situated; and

38. Defendants and their agents, servants, employees, attorneys, and persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including facsimile transmission, shall cooperate fully with the Commission to locate and

provide to representatives of the Commission all books and records of the Defendants, wherever such books and records may be situated.

IX.

SERVICE OF ORDER

IT IS HEREBY ORDERED that:

39. Copies of this Order may be served by any means, including facsimile transmission and electronic mail, upon Defendants' counsel, any financial institution, or any other entity or person that may have possession, custody, or control of any documents or assets of Defendants, or that may be subject to any provision of this Order.

X.

SERVICE ON THE COMMISSION

IT IS HEREBY ORDERED that:

40. Defendants shall serve all notices and other such materials required by this Order, and other materials on the Commission by delivering a copy to Timothy J. Mulreany, Chief Trial Attorney, Division of Enforcement, Division of Enforcement, U.S. Commodity Futures Trading Commission, 1155 21st, N.W. Washington, DC 20581 via FedEx, UPS, or other reliable overnight delivery service.

XI.

FORCE AND EFFECT OF ORDER

IT IS HEREBY ORDERED that:

41. This Order shall remain in full force and effect until further order of this Court, and that this Court retains jurisdiction of this matter for all purposes.

XII.

BOND NOT REQUIRED OF PLAINTIFF

42. Plaintiff is an agency of the United States, and therefore pursuant to Section 6c(b) of the Act, 7 U.S.C. § 13a-1(b) (2012), no bond is required prior to entry of this Order.

SO ORDERED, this 14th day of January, 2016.



Judge Lee Yeakel
UNITED STATES DISTRICT JUDGE

cc: All counsel of record