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

CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY



U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

SEKEN POUSA, INVESTMENT
INTELLIGENCE CORPORATION, *DBA*
PROPHETMAX MANAGED FX, JOEL
FRIANT, MICHAEL DILLARD, AND
ELEVATION GROUP, INC,

Defendants.

Case No.

A-12-CV-0862-LY

**CONSENT ORDER OF PERMANENT INJUNCTION AND
OTHER STATUTORY AND EQUITABLE RELIEF AGAINST
DEFENDANTS MICHAEL DILLARD AND ELEVATION GROUP, INC.**

On September 18, 2012, Plaintiff U.S. Commodity Futures Trading Commission (the “Commission” or “CFTC”) filed a Complaint against, among others, Michael Dillard and Elevation Group, Inc. (“Dillard” or “Elevation” respectively) (collectively, “Defendants”) for Permanent Injunction, Civil Penalties, and Other Equitable Relief, for violations of the Commodity Exchange Act (“Act”), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), 7 U.S.C. §§ 1 *et seq.*, and the Commission’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. § 1.1 *et seq.* (2012).

I.

CONSENTS AND AGREEMENTS

To effect partial settlement of the matters alleged in the Complaint against Dillard and Elevation, without a trial on the merits or any further judicial proceedings, Dillard and Elevation:

1. Consent to the entry of this Consent Order of Permanent Injunction and Other Statutory and Equitable Relief Against Defendants Michael Dillard and Elevation Group, Inc. (“Consent Order”);
2. Affirm that they have read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledge service of the summons and Complaint;
4. Admit the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1;
5. Admit the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1, *et seq.*;
6. Admit that venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, 7 U.S.C. § 13a-1(e);

7. Waive:

(a) any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2012), relating to, or arising from, this action;

(b) any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;

(c) any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and

(d) any and all rights of appeal from this Consent Order;

8. Consent to the continued jurisdiction of this Court over them for the purpose of implementing and carrying out the terms and conditions of all orders and decrees, including orders setting the appropriate amounts of disgorgement and civil monetary penalty, that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of the Court, to assure compliance with this Consent Order and for any other purpose relevant to this action, even if Dillard or Elevation, now or in the future, reside outside the jurisdiction of this Court;

9. Agree that they will not oppose enforcement of this Consent Order by alleging that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objection based thereon;

10. Agree that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect their: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Dillard and Elevation shall undertake all steps necessary to ensure that their agents or employees under their authority or control understand and comply with this agreement.

11. By consenting to the entry of this Consent Order, neither admit nor deny the allegations of the Complaint or the Findings of Fact and Conclusions of Law in this Consent Order, except as to jurisdiction and venue, which they admit. Further, Dillard and Elevation agree and intend that the allegations contained in the Complaint and all of the Findings of Fact and Conclusions of Law contained in this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: (a) any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Dillard and Elevation; (b) any proceeding pursuant to Section 8a of the Act, as amended, 7 U.S.C. § 12a, and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2012); and/or (c) any proceeding to enforce the terms of this Consent Order.

12. Agree to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 49 of Part VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against them, whether inside or outside the United States.

13. Agree that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Dillard and Elevation in any other proceeding.

14. Dillard and Elevation consent to pay disgorgement, plus post-judgment interest, in an amount to be determined upon subsequent consent order or motion by the Commission and/or hearing before this Court.

15. Dillard and Elevation consent to pay a civil monetary penalty, plus post-judgment interest, in an amount to be determined upon subsequent consent order or motion by the Commission and/or hearing before this Court.

II.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, as set forth herein.

THE PARTIES AGREE AND THE COURT HEREBY FINDS:

A. Findings of Fact

1. The Parties To This Consent Order

16. Plaintiff U.S. Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, as amended, 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2012).

17. Defendant **Elevation Group, Inc., d/b/a Elevation Group FX** is a Texas corporation. Its principal place of business is 815-A Brazas St. Suite 111 Austin, Texas 78701. Elevation has never been registered with the Commission in any capacity. Elevation is not a financial institution, registered broker dealer, insurance company, financial holding company, or investment bank holding company, or an associated entity of such entities.

18. Defendant **Michael Dillard** is a resident of Austin, Texas and is the principal of Elevation. He operates Elevation, provides online advice to subscribers of Elevation, and solicited clients for Investment Intelligence Corporation's, *dba* ProphetMax Managed FX ("IIC"), managed forex investment. Dillard has never been registered with the Commission in any capacity, nor has he sought or does he qualify for exemption from registration.

2. Defendants' Solicitation for Discretionary Trading Accounts in Forex

19. Beginning from at least January 1, 2012 and continuing to the present (the "relevant period"), IIC, through Senen Pousa ("Pousa"), Joel Friant ("Friant") and its other agents, utilized "wealth creation" webcasts, webinars, podcasts, emails, and other online seminars via the Internet to directly and indirectly solicit actual and prospective clients worldwide to open forex trading accounts at IIC. Further, IIC, through Pousa, Friant and its other agents, used these means to convince clients to allow IIC to exercise discretionary trading authority over clients' accounts at IB Capital that engaged in leveraged forex transactions, or provided IIC with written discretionary trading authority to trade said accounts.

20. Clients were solicited either directly via IIC's webcasts, webinars, podcasts, and other online seminars, or were solicited by Elevation, through its agents, including Dillard. Elevation, by and through its agents, operates the website *www.theelevationgroup.net*, through which it introduces its subscribers to various investment options.

21. Clients of IIC paid a “membership fee” of approximately two thousand dollars (\$2,000) directly to IIC to gain twelve (12) months of access to IIC’s managed forex services. Elevation and Dillard were paid a fee directly from IIC for clients who were solicited by Elevation. All clients were advised that ten thousand (\$10,000) was the minimum deposit required to participate in IIC’s managed forex services.

22. Elevation, through Dillard, recommended to its subscribers that they invest with Pousa and IIC. Elevation was to be compensated with a 30% commission of IIC’s two thousand dollar (\$2,000) membership fee for every investor introduced to IIC. Elevation and Dillard disclosed to their clients that they would be receiving compensation from IIC for referring them to IIC’s trading instruction program. Elevation and Dillard have agreed to return all compensation they received to the CFTC.

23. Most if not all of the clients solicited by Elevation, through Dillard, and who opened retail forex trading accounts during the relevant period were not eligible contract participants as that term is defined in Section 1(a)(12)(A)(xi) of the Act, 7 U.S.C. § 1a(12)(A)(xi) (2006).

3. The Solicitations at Issue Involved Retail Forex Transactions

24. The forex trades conducted, or offered to be conducted, on behalf of the clients solicited by Defendants were entered into on a leveraged or margined basis.

25. The forex transactions for which the Defendants solicited clients, and placed with IB Capital acting as the counterparty, neither resulted in delivery within two days nor created an enforceable obligation to deliver between a buyer and a seller who had the ability to deliver and accept delivery, respectively, in connection with their line of business. Rather, these forex

contracts remained open from day to day and ultimately were offset without anyone making or taking delivery of actual currency (or facing an obligation to do so).

26. Neither IIC, Pousa, Friant nor IB Capital are a financial institution, registered broker dealer, insurance company, financial holding company, or investment bank holding company or associated person of financial institutions, registered broker dealer, insurance company, financial holding company, or investment bank holding company.

4. Failure to Register as Required

27. At no time during the relevant period was Elevation registered with the Commission as an Introducing Broker (“IB”), nor was Dillard registered with the Commission as an Associated Person (“AP”) of an IB.

28. Dillard, and/or other agents or employees of Elevation committed the acts described herein within the scope of their agency, employment or office with Elevation.

B. Conclusions of Law

1. Jurisdiction and Venue

29. This Court has jurisdiction over this action pursuant to Section 6c of the Act, as amended, 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder, the Commission may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

30. The Commission has jurisdiction over the forex solicitations and transactions at issue in this action pursuant to Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (2006 & Supp. IV 2011).

31. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, as amended, 7 U.S.C. § 13a-1(e), because the Defendants reside in this jurisdiction and the acts and practices in violation of the Act occurred within this District.

2. Elevation violated Section 2(c)(2)(C)(iii)(I)(aa), as Amended by the CRA, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), and Regulation 5.3(a)(5)(i), 17 C.F.R. § 5.3(a)(5)(i) (2012).

32. With certain exemptions that are not applicable here, Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa) and Regulation 5.3(a)(5)(i), 17 C.F.R. § 5.3(a)(5)(i) (2012), among other things, requires registration with the Commission as an IB to solicit or accept orders for agreements, contracts or transactions in forex that are offered to, or entered into with, non-eligible contract participants on a leveraged or margined basis.

33. By (1) soliciting customers through its website, *www.theelevationgroup.net*, (2) to open a variety of leveraged forex trading accounts, (3) from persons who were not eligible contract participants, (4) while not qualifying for an exemption from registration, Elevation has acted as an IB without benefit of registration, in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended by the CRA, 7 U.S.C. 2(c)(2)(C)(iii)(I)(aa) and Regulation 5.3(a)(5)(i), 17 C.F.R. § 5.3(a)(5)(i) (2012).

34. Elevation has engaged, is engaging, or is about to engage in acts and practices that violate Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended by the CRA, 7 U.S.C. 2(c)(2)(C)(iii)(I)(aa) and Regulation 5.3(a)(5)(i), 17 C.F.R. § 5.3(a)(5)(i) (2012). Unless restrained and enjoined by this Court, there is a reasonable likelihood that Elevation will continue to engage in the acts and practices alleged in the Complaint or in similar acts and

practices that violate the Act and Regulations. Furthermore, the nature of Elevation's violations and the need to deter others from committing similar violations of the Act and Regulations warrants the imposition of ancillary equitable relief to carry out the objectives of the Act and Regulations.

3. Dillard Violated Section 2(c)(2)(C)(iii)(I)(aa), as Amended by the CRA, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), and Regulation 5.3(a)(5)(ii), 17 C.F.R. § 5.3(a)(5)(ii) (2012).

35. By the conduct described in paragraphs 1 through 33 above, Dillard associated with an IB as a partner, officer, employee or agent, in a capacity that involved the solicitation or acceptance of retain forex customers' orders, without being registered as an AP of the IB Elevation, in violation of Section 2(c)(2)(C)(iii)(I)(aa), as amended by the CRA, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), and Regulation 5.3(a)(5)(ii), 17 C.F.R. § 5.3(a)(5)(ii) (2012).

36. The foregoing failure of Dillard to register as an AP of Elevation occurred within the scope of Dillard's employment or office with Elevation. Elevation is therefore liable for Dillard's acts and failures in violation of Section 2(c)(2)(C)(iii)(I)(aa), as amended by the CRA, 7 U.S.C. § 2(c)(2)(C)(iii)(I)(aa), and Regulation 5.3(a)(5)(ii), 17 C.F.R. § 5.3(a)(5)(ii) (2012) pursuant to Section 2(a)(1)(B) of the Act, as amended, 7 U.S.C. § 2(a)(1)(B).

37. Dillard has engaged, is engaging, or is about to engage in acts and practices that violate Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended by the CRA, 7 U.S.C. 2(c)(2)(C)(iii)(I)(aa) and Regulation 5.3(a)(3)(ii), 17 C.F.R. § 5.3(a)(3)(ii) (2012). Unless restrained and enjoined by this Court, there is a reasonable likelihood that Dillard will continue to engage in the acts and practices alleged in the Complaint or in similar acts and practices that violate the Act and Regulations. Furthermore, the nature of Dillard's violations and the need to

deter others from committing similar violations of the Act and Regulations warrants the imposition of ancillary equitable relief to carry out the objectives of the Act and Regulations.

III.

ORDER FOR PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

38. Elevation, all persons insofar as they are acting in the capacity of Elevation's officers, agents, servants, employees, and attorneys, and all persons insofar as they are acting in active concert or participation with Elevation who receive actual notice of this Consent Order by personal service or otherwise, are permanently restrained, enjoined, and prohibited from directly or indirectly:

- a. Engaging in any conduct in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended by the CRA, 7 U.S.C. 2(c)(2)(C)(iii)(I)(aa), including, but not limited to, soliciting or accepting orders from any customer or potential customer who is not an eligible contract participant in connection with forex transactions without registering with the Commission; and
- b. Engaging in any conduct in violation of Regulation 5.3(a)(5)(i), 17 C.F.R. § 5.3(a)(5)(i) (2012), including, but not limited to, acting as an IB for customers' forex transactions without registering with the Commission.

39. Dillard is permanently restrained, enjoined, and prohibited from directly or indirectly:

- a. Engaging in any conduct in violation of Section 2(c)(2)(C)(iii)(I)(aa) of the Act, as amended by the CRA, 7 U.S.C. 2(c)(2)(C)(iii)(I)(aa), including, but not limited

to, soliciting or accepting orders from any customer or potential customer who is not an eligible contract participant in connection with forex transactions without registering with the Commission; and

- b. Engaging in any conduct in violation of Regulation 5.3(a)(5)(ii), 17 C.F.R. § 5.3(a)(5)(ii) (2012), including, but not limited to, acting as an AP of an IB without registering with the Commission.

IV. TRADING PROHIBITION

IT IS FURTHER ORDERED THAT:

40. Elevation, all persons and entities insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of Elevation, and all persons and entities insofar as they are acting in concert or participation with Elevation who receive actual notice of this order by personal service or otherwise, shall be permanently prohibited, enjoined and restrained from directly or indirectly:

- a. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, to be codified at 7 U.S.C. § 1(a)), on behalf of any U.S. customers;
- b. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3(hh), 17 C.F.R. § 1.3(hh) (2011) (“commodity options”), security futures products, and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) (“forex contracts”), for any U.S. customers;

- c. Controlling or directing the trading for or on behalf of any U.S. customer, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts; and
- d. Soliciting, receiving, or accepting any funds from any U.S. customers for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts.

41. The provisions contained in Part IV of this Consent Order shall remain in effect unless and until Elevation properly registers with the Commission.

42. Dillard, and all persons and entities insofar as they are acting in concert or participation with Dillard who receive actual notice of this order by personal service or otherwise, shall be permanently prohibited, enjoined and restrained from directly or indirectly:

- a. Controlling or directing the trading for or on behalf of any U.S. customer, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts; and
- b. Soliciting, receiving, or accepting any funds from any U.S. customers for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, and/or forex contracts.

43. The provisions contained in Part IV of this Consent Order shall remain in effect unless and until Dillard properly registers with the Commission.

V.

STATUTORY AND EQUITABLE RELIEF

44. Dillard and Elevation shall jointly and severally pay disgorgement, plus post-judgment interest, to clients.

45. Dillard and Elevation shall jointly and severally pay a civil monetary penalty, plus post-judgment interest, to the CFTC.

46. The Court shall determine the amounts of disgorgement and civil monetary penalty and the procedures for payment and distribution of these monetary sanctions by further order upon: motion of the parties submitting to the Court a proposed consent order setting out their agreement on the amounts of disgorgement and civil monetary penalty to be paid by Dillard and Elevation in this matter; subsequent motion by the CFTC; and/or hearing before this Court.

47. In connection with any Commission motion for disgorgement and/or civil monetary penalties, and at any hearing held on such a motion: (a) Dillard and Elevation will be precluded from arguing that they did not violate the federal laws as alleged in the Complaint; (b) Dillard and Elevation may not challenge the validity of their consents and agreements herein or this Consent Order; (c) solely for the purposes of such motion, the allegations of the Complaint and the Findings of Fact and Conclusions of Law in this Consent Order shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and a civil monetary penalty, the parties may take discovery, including discovery from appropriate non-parties.

48. Dillard and Elevation shall cooperate fully and expeditiously with the CFTC, including the CFTC's Division of Enforcement, in any current or future investigation, civil litigation or administrative matter related to the subject matter of this action. As part of such cooperation, Dillard and Elevation shall comply, to the full extent of their abilities, promptly and truthfully with any inquiries or requests for information including but not limited to, requests for production of documents and authentication of documents, shall provide assistance at any trial, proceeding, or investigation related to the subject matter of this action, including but not limited to, requests for testimony, depositions, and/or interviews. Should the CFTC file any additional action(s) related to the subject matter of this action, Dillard and Elevation are directed to appear in the judicial district in which such action(s) is pending, or in a suitable judicial district agreed to by the parties, to provide deposition testimony and trial testimony should such testimony be necessary.

**VI.
MISCELLANEOUS PROVISIONS**

49. Notice: All notices required to be given by any provision in this Consent Order shall be sent certified mail, return receipt requested, as follows:

Notice to Commission:

David Meister, Director of Enforcement
Commodity Futures Trading Commission
Division of Enforcement
1155 21st Street N.W.
Washington, DC 20581

Notice to Defendants Dillard and Elevation:

Brent R. Baker
ClydeSnow
201 South Main Street
Salt Lake City, UT 84111

Phone: 801-322-2516
Fax: 801-433-2438
BRB@clydesnow.com

All such notices to the Commission shall reference the name and docket number of this action.

50. Change of Address/Phone: Until such time as Dillard and Elevation satisfy in full their Disgorgement Obligation, and CMP Obligation as set forth in this Consent Order, Dillard and Elevation shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten (10) calendar days of the change.

51. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

52. Invalidation: If any provision of this Consent Order or if the application of any provision or circumstance is held invalid, then the remainder of this Consent Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

53. Waiver: The failure of any party to this Consent Order or of any customer at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or customer at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

54. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of

this action in order to implement and carry out the terms of all orders and decrees, including orders setting the appropriate amounts of restitution, disgorgement and civil monetary penalty, that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of the Court, to assure compliance with this Consent Order and for any other purpose relevant to this action.

55. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon Dillard and Elevation, upon any person under their authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Dillard and Elevation.

56. Authority: Dillard hereby warrants that he is the principal of Elevation and that this Consent Order has been duly authorized by Elevation, and that he has been duly empowered to sign and submit this Consent Order on behalf of Elevation.

57. Counterparts and Facsimile Execution: This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.


58. Dillard and Elevation understand that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings they may not challenge the validity of this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this *Consent Order Of Permanent Injunction And Other Statutory And Equitable Relief Against Michael Dillard and Elevation Group, Inc.*


IT IS SO ORDERED on this 18th day of September, 2012.


UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:


Defendant Michael Dillard

Date: 9-17-12


Defendant Elevation Group, Inc.

Date: 9-17-12

Approved as to form:



Brent R. Baker

ClydeSnow

201 South Main Street

Salt Lake City, UT 84111

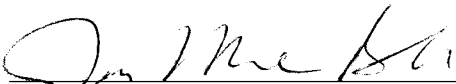
Phone: 801-322-2516

Fax: 801-433-2438

BRB@clydesnow.com

*Attorney for Defendants Michael Dillard and
Elevation Group, Inc.*

CONSENTED TO AND APPROVED BY:



Jon Marc P. Buffa, Senior Trial Attorney
Timothy J. Mulreany, Chief Trial Attorney
U.S. Commodity Futures Trading Commission
Division of Enforcement
1155 21st Street, N.W.
Washington, DC 20581
(202) 418-5306 (Mulreany); (202) 418-5332 (Buffa)
(202) 418-5124 (facsimile)

mulreany@ctfc.gov

jbuffa@ctfc.gov

Attorneys for Plaintiff U.S. Commodity Futures Trading Commission

Date: September 18, 2012