

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Welles worked as a “retention agent” at Yukom Communications Ltd. (“Yukom”) and offered trading in illegal, off-exchange binary options to retail customers, including customers in the United States, through the “BigOption” and “BinaryBook” brands (the “Yukom Brands”). When communicating with customers, Welles misrepresented the fundamental nature of the binary options trading offered to customers and falsely stated that most customers made money, when in fact the substantial majority lost money. Welles also misrepresented her financial expertise, physical location, and identity. Welles intentionally or recklessly disregarded that the solicitations she used to induce customers to deposit funds to trade binary options with the Yukom Brands included false and misleading statements. She therefore committed fraud in violation of the Act and Regulations.

* * * * *

In accepting the Offer, the Commission recognizes Welles’s entry into a formal cooperation agreement between Welles and the Division of Enforcement (“Division”) entered into on September 16, 2019 (“Cooperation Agreement”), which sets forth the terms of her agreement to cooperate with the Commission, including the Division, in connection with the case captioned *CFTC v. Yukom Communications*, No. 1:19-cv-05416 (N.D. Ill., filed Aug. 12, 2019) (the “Yukom Litigation”) and any investigation, litigation, or administrative proceeding relating to the subject matter of this Order.

B. RESPONDENT

Liora Welles is a resident of California who resided in Israel from at least 2014 to 2016. Welles has never registered with the Commission in any capacity.

C. FACTS

During the Relevant Period, Welles was employed as a retention agent, or broker, with Yukom. Lee Elbaz (“Elbaz”) interviewed and hired Welles.

Typically, a Yukom “conversion agent” was responsible for soliciting prospective customers and obtaining an initial deposit, frequently around \$250, and a retention agent was responsible for working with that customer thereafter. Initially, Welles worked as a retention agent and solicited customers to deposit funds to trade binary options² with the BigOption brand

a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

² A binary option is a type of option contract in which the payout depends entirely on the outcome of a discrete event—typically a “yes/no” proposition. A binary options customer enters into a trade that

and reported directly to Elbaz. Later, Welles solicited customers to deposit funds with the BinaryBook brand.

At the direction of her supervisors and managers, including Elbaz, Welles falsely represented to customers that her job was to make them money. Among other false statements, Welles misrepresented the alignment of financial incentives between customers and Yukom, claiming to represent the interests of investors when in fact she knew that Yukom profited through customer losses, and misrepresented customers' ability to withdraw funds. For example, in a recorded call in October 2015, Welles told a customer that they had the same interests and her goal was to make the customer money as she earned commissions on every winning traded. In fact, Welles and other retention agents earned commissions on net deposits – i.e., customer deposits minus withdrawals and charge backs. Respondent also misrepresented the likelihood of profits, telling at least one customer, in an email dated October 13, 2014 that she would “personally trade for you with a guaranteed profit of 30-40%.”

Welles was instructed by Elbaz, as well as her managers and supervisors at Yukom, to prevent customers from withdrawing funds from their trading accounts. One of the tools Welles used to prevent withdrawals was a so-called “bonus.” As utilized by Yukom, a bonus was an amount of purported funds that retention agents could give to a customer to be used in trading. Bonuses did not involve the actual transfer of funds to a customer or a customer's trading account. Further, the bonuses offered by Yukom required a customer to “turnover” their account by trading a multiplier, typically 30 times, of the bonus amount. Welles did not always tell customers about the turnover requirement before placing bonuses in their account. Further, in at least one instance Welles placed a “bonus” in a customer's account without authorization from that customer.

The Respondent, along with Elbaz, provided training to Yukom retention agents. During that training, Welles explained how to “pitch” clients and how to handle resistances and objections from customers. She also drafted an “Objection Pitch” training script that was used in training. That script included numerous false representations, including that that “I only make money when you are profitable. Explain to them that you make 5% commission every time the withdraw profits.”

When communicating with customers, Yukom employees typically use an alias or “stage name.” Welles used three aliases when communicating with customers: “Lindsay Cole,” “Lindsay Taylor,” and “Lindsay Welles.” Each of these aliases was approved by Elbaz. Respondent also identified herself, at various times during the Relevant Period, as a “Senior Broker,” an “Account Manager,” “Hedge Fund Manager” and “Expert Trader” for BigOption and/or BinaryBook, despite having no background in finance, business, or financial management. Welles also falsely represented her geographical location and professional qualifications.

During the Relevant Period, the Respondent was responsible for approximately \$2,395,310 in customer losses. Respondent has been ordered to pay criminal restitution

predicts whether the price of an underlying asset—such as a currency pairing or commodity future—will rise above or fall below a specified amount at a specified date and time.

of \$2,395,310, joint and severally with Elbaz, in her criminal case, *United States v. Welles*, 8:18-cr-00613-TDC (filed D. Md. Dec. 13, 2018).

III. LEGAL DISCUSSION

A. Option Fraud in Violation of Section 4c(b) of the Act and Regulation 32.4

Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), makes it unlawful for any person “to offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under [the] Act which is of the character of, or is commonly known to the trade as,” inter alia, an “option,” “bid,” “offer,” “put,” or “call,” in contravention of Commission rules or regulations “prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.” Binary options qualify as commodity option transactions within the meaning of the Act and Regulations. *See CFTC v. Vision Fin. Partners, LLC*, Case No. 16-60297-CIV-Cohn/Seltzer, 2016 WL 3163071, at *3 (S.D. Fla. June 3, 2016) (denying motion to dismiss; holding that binary options are commodity options within the meaning of Section 4c(b) of the Act).

Regulation 32.4, 17 C.F.R. § 32.4 (2019), provides that, in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction, it shall be unlawful “for any person directly or indirectly: (a) To cheat or defraud or attempt to cheat or defraud any other person; (b) To make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; or (c) To deceive or attempt to deceive any other person by any means whatsoever.” Fraud involving commodity options is established when a person or entity: (A) makes a misrepresentation, misleading statement, or a deceptive omission; (B) acts with scienter; and (C) the misrepresentation or omission is material. *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1328 (11th Cir. 2002) (finding commercial that overemphasized profit potential, downplayed risk of loss, and urged viewers to take immediate action or risk missing the opportunity materially misleading, despite inclusion of boilerplate risk disclosures); *CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 446-47 (D.N.J. 2000) (holding that “the CFTC must demonstrate that the defendant made a material misrepresentation of presently existing or past fact with scienter” to establish a claim for futures and options fraud under Sections 4b(a) and 4c(b) of the Act.”); *CFTC v. Nat’l Invest. Consultants, Inc.*, No. C 05-02641, 2005 WL 2072105, at *8 (N.D. Cal. Aug. 26, 2005) (holding that the Commission can establish scienter under Section 4b(a) of the Act by showing that a defendant “knew the representations were false and were calculated to cause harm or by showing that the representations were made with a reckless disregard for their truth or falsity.” (citing *CFTC v. Noble Wealth Data Information Services, Inc.*, 90 F. Supp. 2d 676, 686 (D. Md. 2000))).

As described above, while acting as retention agent at Yukom, Welles intentionally or recklessly made material misrepresentations, misleading statements, and deceptive omissions. By engaging in this conduct, Welles violated Section 4c(b) of the Act and Regulation 32.4.

B. Fraud in Connection with Swaps Transactions in Violation of Section 6(c)(1) and Regulation 180.1(a)

Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), provides in relevant part that “[i]t shall be unlawful for any person, directly or indirectly, to use or employ or attempt to use or employ, in connection with any swap . . . any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate” Pursuant to this provision, the Commission promulgated Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2019), which makes it unlawful for any person, directly or indirectly, in connection with any swap, “to intentionally or recklessly: (1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; (2) Make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; [or] (3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person.”

Section 1a(47)(A) of the Act, 7 U.S.C. § 1a(47)(A) (2012), defines a “swap” as including, inter alia, “any agreement, contract, or transaction” that: (i) is an option of any kind; (ii) provides for payment dependent on the occurrence, nonoccurrence, or extent of occurrence of an event or contingency; or (iii) provides on an executory basis for payments based on the value of one or more interest or other rates, currencies, commodities, securities, or other financial or economic interests or property, and that transfers in whole or part the financial risk associated with a future change in such value between the parties to the transaction without also conveying an ownership interest in the asset or liability. Binary options qualify as swaps based on the plain language of Section 1a(47)(A). *See CFTC v. Vault Options, Ltd.*, No. 1:16-CV-01881, 2016 WL 5339716, at *6 (N.D. Ill. July 20, 2016) (default judgment) (holding that binary options are swaps).

By intentionally or recklessly engaging in the same conduct that violated Sections 4c(b) of the Act and Regulation 32.4, Welles violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1)-(3). *See CFTC v. Hunter Wise Commodities, LLC*, 21 F. Supp. 3d 1317, 1347 (S.D. Fla. 2014) (finding that material misrepresentations and omissions in connection with the sale of commodities violated Section 6(c)(1) of the Act and Regulation 180.1).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Sections 4c(b) and 6(c)(1) of the Act, 7 U.S.C. §§ 6c(b) and 9(1) (2012), and Regulations 32.4 and 180.1(a)(1)-(3), 17 C.F.R. §§ 32.4, 180.1(a)(1)-(3) (2019) by making fraudulent misrepresentations to customers and prospective customers in connection with the trading of binary options.

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which she, without admitting or denying the findings and conclusions herein, except to the extent that Welles admits those findings in any

related action against Welles by, or any agreement with, the DOJ or any other governmental agency or office:

- A. Acknowledges service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 - 1. The filing and service of a complaint and notice of hearing;
 - 2. A hearing;
 - 3. All post-hearing procedures;
 - 4. Judicial review by any court;
 - 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 - 6. Any and all claims that she may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012), and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2019), relating to, or arising from, this proceeding;
 - 7. Any and all claims that she may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II §§ 201-53, 110 Stat. 847, 857-74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
 - 8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing any other relief, including this Order;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer; and
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
 - 1. Makes findings by the Commission that Respondent violated Sections 4c(b), and 6(c)(1) of the Act, 7 U.S.C. §§ 6c(b), and 9(1) (2012), and Regulations 32.4 and 180.1(a)(1)-(3), 17 C.F.R. §§ 32.4, 180.1(a)(1)-(3) (2019) by making fraudulent misrepresentations to customers and prospective customers in connection with the trading of binary options.

2. Orders Respondent to cease and desist from violating Sections 4c(b), and 6(c)(1) of the Act and Regulations 32.4 and 180.1(a)(1)-(3).
3. Orders that Respondent be permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012)) for or on behalf of any other person or entity, and all registered entities shall refuse him trading privileges for such purposes; and
4. Orders Respondent to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Sections 4c(b), and 6(c)(1) of the Act, 7 U.S.C. §§ 6c(b), and 9(1) (2012), and Regulations 32.4 and 180.1(a)(1)-(3), 17 C.F.R. §§ 32.4, 180.1(a)(1)-(3) (2019).
- B. Respondent is permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012)) for or on behalf of any other person or entity, and all registered entities shall refuse him trading privileges for such purposes.
- C. Respondent shall comply with the following conditions and undertakings set forth in the Offer:
 1. **Public Statements:** Respondent agrees that neither she nor any of her successors and assigns, agents, or employees under her authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent shall comply with this agreement, and shall undertake all steps necessary to ensure that all agents and/or employees under her authority or control understand and comply with this agreement.
 2. Respondent agrees that she shall never, directly or indirectly:
 - a. entering into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2019));
 - b. having any commodity interests traded on Respondent's behalf;

- c. 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 interests;
 - d. soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
 - e. 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) (2019); and/or
 - f. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2019)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)), registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9).
3. Cooperation: Welles shall cooperate fully and expeditiously with the Commission, including the Division, in accordance with the terms set forth in the Cooperation Agreement in any investigation, civil litigation, or administrative proceeding related to the subject matter of this action or any current or future Division investigation or Commission action related thereto, including without limitation the Yukom Litigation. As part of such cooperation, Welles agrees to:
- a. preserve and produce to the Commission in a responsive and prompt manner, as requested by Division Staff, all relevant non-privileged documents, information, and other materials wherever located, in the appropriate possession, custody, or control of Welles;
 - b. utilize her knowledge and skill to explain sales and marketing services, including “retention” services, for entities doing business under the brand names BinaryBook and BigOption, to interpret information, or identify new and productive lines of inquiry;
 - c. prepare and appear for interviews and testimony at such times and places as requested by Division staff;
 - d. respond completely and truthfully to all inquiries and interviews, when requested to do so by Division staff;
 - e. identify and authenticate relevant documents and other evidentiary materials, execute affidavits and/or declarations, and testify completely and truthfully at depositions, hearings, trial, and other judicial proceedings in connection with the Yukom Litigation;
 - f. enter into tolling agreements, when requested to do so by Division staff, during the period of cooperation;

- g. accept service by mail, electronic mail, or facsimile transmission of notices or subpoenas for documents and/or testimony;
 - h. appoint her attorney as agent to receive service of such notices and subpoenas;
 - i. waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules in connection with requests or subpoenas of Division staff; and
 - j. serve by hand delivery or by next-day mail all written notices and correspondence required by or related to the Cooperation Agreement to the Director of the Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, NW, Three Lafayette Centre, Washington, DC 20581, unless otherwise directed in writing by Division Staff.
4. Change of Address/Phone: Until the conclusion of the Yukom Litigation, Respondent shall provide written notice to the Commission of any change to her telephone numbers and mailing addresses within ten calendar days of the change.

The provisions of this Order shall be effective as of this date.

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 30, 2019