

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

SHIRA UZAN,

Respondent.

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CFTC Docket No. 19-34

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Office of Proceedings
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6:05 pm, Sep 30, 2019

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
 SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING
 FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission” or “CFTC”) has reason to believe that from approximately January 2015 through September 2016 (“Relevant Period”) Shira Uzan (“Uzan” or “Respondent”), violated Sections 4c(b) and 6(c)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6c(b), 9(1) (2012), and Commission Regulations (“Regulations”) 32.4 and 180.1(a)(1)-(3), 17 C.F.R. §§ 32.4, 180.1(a)(1)-(3) (2019). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, except to the extent that Uzan admits those findings in any related action against Uzan by, or any agreement with, the United States Department of Justice (“DOJ”) or any other governmental agency or office, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.¹

¹ Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Uzan worked as a “retention agent” at Yukom Communications Ltd. (“Yukom”) and offered trading in illegal, off-exchange binary options² to retail customers, including customers in the United States, through the “BigOption” and “BinaryBook” brands (the “Yukom Brands”). Uzan misrepresented the fundamental nature of the binary options trading offered to Yukom’s customers. Among other things, Uzan falsely stated that the binary option trading was profitable. Uzan also misrepresented her financial expertise, physical location, and identity. Because Uzan 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 committed fraud in violation of the Act and Regulations.

* * * * *

In accepting the Offer, the Commission recognizes Uzan’s entry into a formal cooperation agreement between Uzan and the Division of Enforcement (“Division”) entered into on September 25, 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

Shira Uzan is a resident of California who resided in Israel from at least 2015 to 2018. Uzan has never registered with the Commission in any capacity.

C. FACTS

For approximately nineteen months, Uzan worked as a retention agent at Yukom’s office in Caesarea, Israel. In January 2015, shortly after accepting an offer to work at Yukom, Uzan participated in a two week training class led by Elbaz and other Yukom managers and supervisors that included instruction on high pressure sales techniques. Uzan recorded portions of that training session on her personal cell phone. Towards the end of the course, Uzan received a template email outlining sales pitches to use when soliciting customers to deposit additional

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 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.

funds to trade binary options. Uzan also received training on how to stop customers from withdrawing funds.

As a Yukom retention agent, Uzan communicated with customers in the United States and elsewhere via phone and email. Uzan's job was to encourage customers to deposit additional funds to trade binary options through the Yukom Brand's internet trading websites, www.bigoption.com and www.binarybook.com, and to prevent customers from withdrawing funds.

At the direction of her supervisors and managers, including Elbaz, Uzan falsely represented to customers that her job was to make them money. For example, in an email dated July 14, 2015, Uzan told a BinaryBook customer that her job was to "assist you in making profits from the very beginning," even though Uzan knew that her job was not to help clients make money but rather to get customers to deposit additional funds. Uzan did not disclose that Yukom, or other associated entities, was on the opposite side of each binary option trade, meaning that Yukom won when customers lost.

Uzan also misrepresented the profitability of binary option transactions with the Yukom Brands. In an email dated February 10, 2016, Uzan told a BinaryBook customer that she was a "senior broker and qualified market analyst with 15 years' experience" and an "87% winning rate" on her trades. Uzan knew those statements were false at the time she made them.

Uzan 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 Uzan 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. Uzan did not always tell customers that a bonus would "lock" them into the account. Yukom also used the "academy" as a purported training tool to "get clients addicted" to trading binary options and prevent withdrawals.

When communicating with customers, Yukom employees typically use an alias or "stage name." Uzan used the alias Emily Laski. In addition to using an alias, Uzan also falsely represented her professional qualifications and geographical location.

Uzan regularly participated in weekly sales meetings at Yukom. During these meetings, Elbaz would often speak about sales targets, specifically the amount of customer deposits. At times, Yossi Herzog ("Herzog") spoke at the weekly meetings. Uzan frequently received reports regarding the amount her customers had deposited. At no time did Uzan receive a report regarding her customers' trading activity. Uzan also received instructions via emails from Yukom's owners and managers, including Elbaz.

Consistent with her training, Uzan encouraged customers to deposit funds via wire transfer, as opposed to credit card. This was done to avoid credit card "chargebacks," which can occur when a customer makes a report of fraud or unauthorized transactions to their bank.

Typically, Uzan received emails from Yukom's management identifying the specific bank accounts for customers to wire funds for purported binary options trades. Consistent with the instructions provided in those emails, Uzan would tell customers not to write the name of the Yukom Brand on their wire transfers. This was done in order to avoid "burning" bank accounts due to customer complaints.

While employed by Yukom, Uzan received a base salary, plus commissions. Uzan's commissions were based on "net deposits," meaning the amount of money customers deposited, minus all customer withdrawals and credit card chargebacks. During the Relevant Period, the Respondent was responsible for approximately \$1,819,595 in customer losses. The Commission understands that Respondent will be ordered to pay criminal restitution, joint and severally with Elbaz, of \$1,819,595 in her criminal case, *United States v. Uzan*, 8:18-cr-00608-TDC (filed D. Md. Dec. 11, 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 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, Uzan intentionally or recklessly made material misrepresentations, misleading statements, and deceptive omissions. By engaging in this conduct, Uzan 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, Uzan 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), 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 she admits those findings in any related action against her 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 2(e), 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) making fraudulent misrepresentations to customers and prospective customers to trade binary options with Yukom, and by offering and confirming the execution of illegal, off-exchange binary option transactions.
 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.

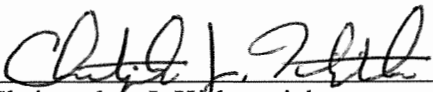
2. Respondent agrees that she shall never, directly or indirectly:
 - a. entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2019));
 - b. having any commodity interests traded on Respondent’s behalf;
 - c. controlling or directing 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: Uzan 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, Uzan 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 Uzan;
 - 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