

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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Office of Proceedings
Proceedings Clerk

9:14 am, Sep 29, 2021

In the Matter of

ProFx-Capitals,

Respondent.

CFTC Docket No. 21-29

**COMPLAINT AND NOTICE OF HEARING PURSUANT TO SECTION 6(d) OF THE
COMMODITY EXCHANGE ACT**

The Commodity Futures Trading Commission (“Commission”) has received information from its staff that tends to show, and the Commission’s Division of Enforcement (“Division”) alleges that:

**I.
SUMMARY**

1. From at least May 2021 and through the present (the “relevant period”), ProFx-Capitals (“Respondent”), has operated a website with a URL address of www.profx-capitals.com (the “website”). On the website, Respondent offers services to the general public, including soliciting or accepting orders for binary options that are based off the value of a variety of assets including commodities such as foreign currencies and cryptocurrencies including Bitcoin, and accepting and holding customer money in connection with those purchases of binary options. Respondent is not registered with the Commission as a futures commission merchant. Thus, Respondent has violated and is violating Section 4d(1) of the Act, 7 U.S.C. § 4d(1) (2018).

**II.
RESPONDENT**

2. **ProFX-Capitals** is a person that operates a website viewable at the URL address profx-capitals.com. Respondent claims to be based in New York, and also lists an address at 751

Grasslands Road, Valhalla, NY 10595. Respondent also claims on the website that the email address support@profx-capitals.com may be used to contact it.

III. FACTS

3. On the website, Respondent offers to the general public, including to persons in the United States, the opportunity to purchase binary options that are based off the value of a variety of assets, including commodities such as foreign currencies and cryptocurrencies, including Bitcoin.

4. On the website, Respondent claims that it allows customers to “Trade on Crypto, Forex and Binary Options.”

5. On the website, Respondent directs clients to deposit funds into a wallet in order to begin trading.

IV. VIOLATIONS OF THE ACT (SECTION 4d(1) OF THE ACT)

6. Paragraphs 1 through 5 are realleged and incorporated herein by reference.

7. Section 1a(28)(A) of the Act, 7 USC § 1a(28)(A) (2018), defined a Futures Commission Merchant (“FCM”) as any “individual, association, partnership, or trust that is engaged in soliciting or accepting orders for,” among other things, a swap or a commodity options, and, “in connection with soliciting or accepting such orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades that result or may result therefrom.” Binary options that are based on the price of an underlying commodity like forex or cryptocurrency are swaps and commodity options as used in the definition of an FCM.

8. Section 4d(1) of the Act, 7 U.S.C. § 6d(1) (2018) makes it unlawful for any person to act as an FCM unless such person is registered as such with the Commission.

9. Respondent is a person engaged in soliciting or in accepting orders for a swap, or any commodity option, and in or in connection with soliciting or accepting such orders accepts money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

10. Respondent violated Section 4d(1) of the Act by acting as an FCM without registering as such with the Commission.

V.

By reason of the forgoing allegations, the Commission deems it necessary and appropriate, pursuant to its responsibilities under the Act, to institute a public administrative proceeding to determine whether the allegations set forth in Parts I, II, III, and IV above are true, and if so, whether an appropriate order should be entered in accordance with Section 6(d) of the Act, 7 U.S.C. § 13b (2018), imposing the following sanctions:

A. Directing Respondent to cease and desist from violating the provisions of the Act set forth herein.

VI.

Upon consideration of the information received from its staff and of the allegations of the Division of Enforcement contained in paragraphs 1 through 10 above, the Commission finds and determines that:

(A) the issues framed by paragraphs 1 through 10 of the pleadings of this matter are clear, narrow and capable of speedy resolution;

(B) Respondent is alleged to have acted as a futures commission merchant without registering;

(C) the public is entitled to be protected against persons who act as futures commission merchants without registering;

(D) Respondent and the public are entitled to a prompt decision on the question of whether Respondent acted as a futures commission merchant without registering; and

(E) this proceeding shall be conducted before a Presiding Officer other than an Administrative Law Judge.

WHEREAS the Commission has determined that no party to this proceeding will be prejudiced and that the ends of justice will be served by the adoption of expedited procedures in this matter, IT IS HEREBY ORDERED that a public hearing on the allegations contained in paragraphs 1 through 10 of this Complaint be held for the purpose of taking evidence on the question set forth in Section V above.

IT IS FURTHER ORDERED that in order to expedite this matter, pursuant to the Commission's Rule of Practice under the Act ("Rules") 10.3(b), 17 C.F.R. § 10.3(b) (2020), the Commission is waiving the following rules: (i) Rule 10.12(a)(2)(v) (third sentence) and (a)(3), 17 C.F.R. § 10.12(a)(2)(v)(third sentence) and (a)(3) (2020); (ii) Rule 10.22(b)(second sentence), 17 C.F.R. § 10.22(b)(second sentence) (2020); and (iii) Rule 10.92(a)(first sentence), 17 C.F.R. § 10.92(a)(first sentence) (2020), and implementing the following rules:

Rule regarding service by fax or email. Service by email shall be permitted to the email addresses as follows: (a) for the Division of Enforcement, service by email shall be permitted to the email address ktomer@cftc.gov or doakland@cftc.gov; (b) for Respondent, service by email shall be permitted to the email addresses used by Respondent to conduct business as reflected in the website at URL profx-capitals.com, including but not limited to support@profx-capitals.com; and (c) for both parties, service by fax or email shall be permitted

to any number or address that Respondent identifies to the other party as the preferred number or address. All documents served by email must be in PDF or other non-alterable form.

Rule regarding service of the complaint and notice of hearing. Service by the Proceedings Clerk may be made in person, by confirmed telegraphic notice, by registered mail or certified mail, addressed to the last known business or residence address of the person to be served or the address of his duly authorized agent for service, by fax to any number identified by Respondent, or by email to any email address used by Respondent to conduct business as reflected in the website at the URL address profx-capitals.com, including but not limited to support@profx-capitals.com . If none of the methods result in delivery of the complaint and notice of hearing, the Division may apply to the Presiding Officer for an order directing service by publishing the complaint in a newspaper or periodical likely to be accessible by Respondent, or if no such periodical is identifiable, by publishing the complaint and notice of hearing in the Federal Register and on the Commission's website.

Rule regarding shortened procedures. In lieu of a full oral hearing, the Presiding Officer shall order a shortened procedure as to the submission of direct evidence unless a party otherwise moves and the Presiding Officer finds that a shortened procedure will not adequately protect the rights of the parties and the public interest.

IT IS FURTHER ORDERED that, pursuant to Rule 10.8, 17 C.F.R. § 10.8 (2020), this proceeding shall be conducted before the Commission Judgment Officer, as the Presiding Officer, and all provisions of the Rules or of Part 3 of the Commission Regulations that refer to and grant authority to or impose obligations upon an Administrative Law Judge shall be read as referring to and granting authority to and imposing obligations upon the Commission Judgment Officer as the designated Presiding Officer;

IT IS FURTHER ORDERED that a public hearing for the purpose of taking evidence on the allegations set forth in Sections I to IV above be held before the Presiding Officer in accordance with the Rules, 17 C.F.R. §§ 10.1-10.107 (2020), except as where specifically ordered herein or by the Presiding Officer pursuant to the Rules, at a time and place to set as provided by Section 10.61 or 10.92 of the Rules, 17 C.F.R. §§ 10.61, 10.92 (2020), and that all post-hearing procedures shall be conducted pursuant to Section 10.81 through 10.107 of the Rules, 17 C.F.R. §§ 10.81-10.107 (2020).

IT IS FURTHER ORDERED that the Respondent shall serve and file an Answer to the allegations made against such respondent in paragraphs 1 through 10 of this complaint within twenty (20) days after service, pursuant to Section 10.23 of the Rules, 17 C.F.R. § 10.23 (2020), and pursuant to Section 10.12(a) of the Rules, 17 C.F.R. § 10.12(a) (2020), and shall serve two copies of such Answer and any documents filed in this proceeding upon David Oakland, Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, New York 10005, doakland@cftc.gov. If the Respondent fails to file the required Answer or fails to appear at a hearing after being duly notified, such party shall be deemed in default and the proceeding may be determined against the respondent upon consideration of the Complaint, the allegations of which may be deemed true.

IT IS FURTHER ORDERED that this Complaint and Notice of Hearing shall be served on respondent personally or by registered or certified mail, pursuant to Section 10.22 of the Commission Rule, 17 C.F.R. § 10.22 (2020), or by fax or e-mail or other means as ordered herein. In the absence of an appropriate waiver no officer or employee of the Commission engaged in the performance of investigative or prosecutorial functions in this or any factually

related proceedings will be permitted to participate or advise in the decision of this matter except as a witness or counsel in proceedings held pursuant to this notice.

A handwritten signature in black ink, appearing to read "Robert N. Sidman". The signature is written in a cursive, flowing style.

Robert N. Sidman
Deputy Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 29, 2021