



U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of Proceedings

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12:47 pm, Sep 08, 2014

In the Matter of:

iFINIX FUTURES, INCORPORATED,
Registrant.

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CFTC Docket No. SD 14-02

INITIAL DECISION ON DEFAULT

Before: Philip V. McGuire,
Office of Proceedings
Commodity Futures Trading Commission
Washington, D.C.

Appearances: Lara Turcik, Esq., Trial Attorney
Douglas K. Yatter, Esq., Trial Attorney
Manal Sultan, Deputy Director
Division of Enforcement,
Commodity Futures Trading Commission
New York, NY

Introduction

This is a proceeding to revoke the registration of iFinix Futures, Inc., pursuant to Section 8a(2) of the Commodity Exchange Act ("Act"), 7 U.S.C. §8a(2)(2012), and Commission rules 3.60(g) and 10.93, 17 C.F.R. §§ 3.60(g) and 10.93 (2014). iFinix Futures, Incorporated ("iFinix") is registered as an introducing broker. By motion dated April 30, 2014, the Commission's Division of Enforcement ("Division") has moved for entry of a default judgment against iFinix based on its failure to answer, or otherwise to

appear or respond to, the Commission's "Notice of Intent to Revoke the Registration of iFinix Futures, Inc." ("Notice"). In this connection, on February 25, 2014, the Commission's Proceedings Clerk had served the Commission's Notice on *iFinix*, and its owner and listed principal Benhope Munroe ("Munroe"), at their last registered addresses.¹ Thus, iFinix was properly served pursuant to CFTC rule 3.50.²

The Commission's Notice alleges that iFinix is subject to statutory disqualification from Commission registration based on the "Order for Entry of Judgment by Default, Permanent Injunction, and Civil Monetary Penalty Against Defendants iFinix Futures, Inc. and Benhope Marlon Munroe," entered on September 16, 2013 by the Honorable Judge Leonard D. Wexler of the U.S. District Court for the Eastern District of New York in *CFTC v. iFinix Futures, Inc. and Benhope Marlon Munroe*, Case No. 12-CV-4843 (E.D.N. Y.) ("Order"). As described in more detail in the findings below, the Court's Order found, *inter alia*, that Munroe controlled the operations of iFinix, and that iFinix and Munroe willfully made false statements and provided multiple falsified bank account statements to the National Futures Association during

¹ The CFTC Proceedings Clerk served the Notice, by certified mail, on iFinix at iFinix's Plainview, New York address listed with the National Futures Association, and in care of Benhope Marlon Munroe, who is listed as a principal and owner of iFinix, at his New Milford, Connecticut address. On March 6, 2014, the U.S. Post Office returned to the CFTC the package addressed to iFinix's Plainview, NY address marked "Not deliverable as addressed unable to forward." The Notice addressed to Munroe's New Milford, CT address was returned marked "unclaimed" by the U.S. Post Office on March 31, 2014.

² Pursuant to CFTC rule 3.30(a), 17 C.F.R. § 3.30(a) (2014), the address of each registrant as submitted on its application for registration or as submitted on the biographical supplement shall be deemed to be the address for delivery to the registrant for any communications from the Commission, including any summons, complaint, notice and other written documents or correspondence, unless the registrant specifies another address for this purpose. CFTC rule 3.30(b), 17 C.F.R. § 3.30(b) (2014), provides that each registrant, while registered and for two years after the termination of registration, must notify the National Futures Association ("NFA") of any change of address, and that failure to do so may result in an order of default in any Commission or NFA proceedings. Moreover, pursuant to CFTC rule 3.50, 17 C.F.R. § 3.50 (2014), for purposes of an action for the denial, suspension or revocation of registration, service upon a registrant will be sufficient if mailed by registered mail or certified mail return receipt requested properly addressed to the registrant at the address shown on his application or any amendment thereto, and will be complete upon mailing.

its audit of iFinix in order to conceal iFinix's failure to maintain adequate capital, in violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4). The Court's Order also imposed a permanently injunction and civil monetary penalty.

iFinix did not respond to the Commission's Notice. Therefore, on April 2, 2014, I issued a Default Notice finding that iFinix was in default, and setting deadlines for the Division to file a motion for entry of a default judgment and for iFinix to file any opposition to the Division's motion.³ iFinix similarly did not respond to the Default Notice or to the Division's motion. Accordingly, this matter is ripe for entry of a default judgment.

As a result of its default, iFinix has waived a hearing on all of the issues and is precluded from introducing evidence of mitigation and rehabilitation which is necessary to rebut the strong presumption of unfitness for registration created by the findings of fact, conclusions of law, and sanctions in the Order. As a result, the well-plead allegations in the Notice, as augmented by the evidence, and the proposed findings and conclusions in the Division's motion, are deemed true and conclusive for purposes of finding that iFinix is statutorily disqualified from registration under Sections 8a(2)(C), (E) and (H) of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 12a(2)(C), (E) and (H). Thus, as set out below, the Division's motion has been granted, iFinix has been found to be unfit for registration and statutorily disqualified from registration, and the registration of iFinix has been revoked.

³ The Default Notice was served on iFinix in care of Munroe at his New Milford, CT address.

Findings of Fact

1. iFinix Futures, Incorporated ("iFinix"), formerly known as Pro Active Futures, Incorporated, a Delaware corporation located in Plainview, New York, has been registered since October 2001 as an independent introducing broker, pursuant to Section 4d of the Act, 7 U.S.C. § 6d.

2. Benhope Marlon Munroe ("Munroe"), whose last known address was in New Milford, Connecticut, controlled the operations of iFinix. He holds a more than 10% ownership interest in the firm and is its Chief Financial Officer. He is also the chief executive officer and chief financial officer of its parent corporation. Munroe has been designated with the National Futures Association as a principal of iFinix since September 24, 2008. He is not registered with the Commission.

3. On September 27, 2012, the Commission filed a federal civil injunctive action against iFinix and Munroe. *CFTC v. iFinix Futures, Inc. and Benhope Marlon Munroe*, Case No. 12-CV-4843 (E.D.N.Y.) ("*CFTC v. iFinix*"). The CFTC's complaint alleged, *inter alia*, that iFinix and Munroe made false statements and submitted falsified documents to the NFA in violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4).

4. On September 16, 2013, in *CFTC v. iFinix*, the Honorable Judge Leonard D. Wexler of the U.S. District Court for the Eastern District of New York entered an "Order for Entry of Judgment by Default, Permanent Injunction, and Civil Monetary Penalty Against Defendants iFinix Futures, Inc. and Benhope Marlon Munroe" ("Order"). In that Order, the Court found, *inter alia*, that that the NFA is a futures association registered pursuant to Section 17 of the Act, 7 U.S.C. § 21, and that Munroe and iFinix willfully produced falsified bank statements, made materially false statements, and concealed material information, to the NFA during an NFA audit, which was conducted in furtherance of the

NFA's official duties under the Act. The Court concluded that by engaging in this conduct, Munroe and iFinix violated Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4).⁴

The Court permanently restrained iFinix and Munroe from: (a) willfully falsifying, concealing, or covering up by any trick, scheme, or artifice a material fact, making any false, fictitious, or fraudulent statements or representations, or making or using any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, swap data repository, or futures association acting in furtherance of their official duties, in violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4); (b) 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; and/or (c) trading subject to the rules of any registered entity, entering into transactions involving Commission-regulated products or having such products traded on their behalf, controlling or directing the trading of such products on behalf of any other person or entity, soliciting or receiving or accepting funds for the purpose of purchasing or selling such products, applying for registration or claiming exemption from registration with the Commission, and/or acting as a principal, agent, or any other officer or employee of any person, registered, exempted from registration or required to be registered with the Commission. The Court also ordered iFinix to pay a civil monetary penalty of over 1.2 million plus post-judgment interest.

⁴ The Complaint additionally charged, and the Court's Order found, that iFinix failed to meet certain minimum financial requirements in violation of Section 4f(b) of the Act, 7 U.S.C. § 6f(b), and Commission Regulations 1.12(a), 1.17(a), and 1.18(a) & (b), 17 C.F.R. §§ 1.12(a), 1.17(a), and 1.18(a) and (b).

Discussion and Conclusions of Law

Section 8a(2) presumption of unfitness

Section 8a(2) of the Act, 7 U.S.C. § 12a(2) (2012), sets out eight grounds for denial, suspension or revocation of registration, known customarily as “statutory disqualifications.” According to the relevant House Agriculture Committee Report, each Section 8a(2) disqualification involves a previous formal determination by a court, or the Commission or other government agency, that a person or firm has engaged in conduct involving “especially grave offenses that are clearly related to a person’s [or firm’s] fitness for registration with the Commission.” H.R. report No. 97-565, Part I at 50 (May 17, 1982). The report further explained that, since each Section 8a(2) disqualification is based upon a previous finding or order by a court, or the Commission or other governmental body, “whether or not a person is subject to such a disqualification generally is readily ascertainable by checking officially maintained records.” *Id.*

In conjunction with the Commission’s Part 3 rules, a Section 8a(2) disqualification generally operates as a strong presumption that a person or firm is conclusively unfit to do business in a relevant registered capacity. The Commission has noted that the strong presumption of unfitness for registration under Section 8a(2) of the Act rests on the common-sense inference that once an individual or firm has undertaken serious wrongdoing – as it has been amply demonstrated here that iFinix and its owner Benhope Munroe have done – a substantial risk exists that the individual or firm will undertake similar wrongdoing in the future. *See In re Akar*, Comm. Fut. L. Rep. ¶ 22, 297 (CFTC February 24, 1986). The strong presumption of unfitness can be rebutted by a convincing showing that allowing a person or firm to become or remain

registered will not pose a risk to the public, including, for example, mitigating circumstances, rehabilitation, or close supervision by another registrant. See Commission rules 3.60(b)(2)(i) and 3.60(b)(2)(ii)(A)-(C), 17 C.F.R. §§ 3.60(b)(2)(i) and 3.60(b)(2)(ii)(A)-(C) (2014). By defaulting, iFinix has precluded itself from presenting such rebuttal evidence.

Section 8a(2)(C) of the Act

Section 8a(2)(C) of the Act, 7 U.S.C. § 12a(2)(C) (2012), in relevant part, authorizes the Commission to revoke the registration of any person "if such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction . . . including an order entered pursuant to an agreement of settlement to which the Commission ... is a party, from . . . (i) acting as a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, [or] associated person of any registrant under this Act . . . or (ii) engaging in or continuing any activity when such activity involves ... fraud" Here, cause exists for statutory disqualification of iFinix pursuant to Section 8a(2)(C) because the Order in *CFTC v. iFinix*, which was entered by the United States District Court for the Eastern District of New York, a court of competent jurisdiction: one, permanently enjoins iFinix from trading and from seeking re-registration; and two, permanently enjoins iFinix from committing fraud in violation of the Act and Commission rules.

Section 8a(2)(E) of the Act

Section 8a(2)(E) of the Act, 7 U.S.C. § 12a(2)(E) (2012), in relevant part, authorizes the Commission to revoke the registration of any person "if such person,

within ten years preceding the filing of the application [for registration] or any time thereafter, has been found in a proceeding brought by the Commission... (i) to have violated any provision of [the] Act... where such violation involves ... fraud [or] misappropriation of funds..." Here, cause exists pursuant to Section 8a(2)(E), because the Order in *CFTC v. iFinix* found iFinix to have violated Section 9(a)(4) of the Act for conduct involving the making of false statements and submitting false documents to NFA.

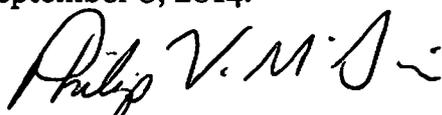
Section 8a(2)(H) of the Act

Section 8a(2)(H) of the Act, 7 U.S.C. § 12a(2)(H) (2012), in relevant part, authorizes the Commission to revoke the registration of any person if "revocation of the registration of any principal of such person would be warranted because of a statutory disqualification listed in this paragraph." Section 8a(2)(H) of the Act further provides that the term "principal," as used in Section 8a(2) of the Act, includes a general partner of a partnership or a person who owns more than 10% of the voting shares of a corporation. Because Benhope Munroe is listed with the Commission as a principal of iFinix, owns a more than 10% financial interest in iFinix, and the refusal, suspension, or revocation of his registration would be warranted pursuant to Sections 8a(2)(C), and (E) of the Act, iFinix's registration is also subject to revocation pursuant to Section 8a(2)(H) of the Act.

ORDER

iFinix is statutorily disqualified from registration under Sections 8a(2)(C), (E) and (H) of the Commodity Exchange Act. Accordingly: one, the Division's motion for entry of a default judgment is hereby granted; two, iFinix is found conclusively unfit for registration; and three, the registration of iFinix is hereby revoked.

Dated September 8, 2014.

A handwritten signature in black ink, appearing to read "Philip V. McGuire". The signature is written in a cursive style with a horizontal line at the end.

Philip V. McGuire,
Judgment Officer