

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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8:42 am, Sep 27, 2018

In the Matter of:

ANTONIO GIACCA,

Respondent.

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) **CFTC Docket No. 18-47**
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**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 Antonio Giacca (“Giacca” or “Respondent”) violated Sections 4c(b), 4o(1), and 6(c)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6c(b), 6o(1), 9(1) (2012), and Commission Regulations (“Regulations”) 4.41(a)(1)-(3) and (b)(1)-(2), 32.4, and 180.1(a)(1)-(3), 17 C.F.R. §§ 4.41(a)(1)-(3), (b)(1)-(2), 32.4, 180.1(a)(1)-(3) (2018). The Commission further has reason to believe that Giacca willfully aided and abetted violations of Sections 4c(b), 4o(1), and 6(c)(1) of the Act and Regulations 4.41(a), 32.2, 32.4, and 180.1(a)(1)-(3), by Michael Shah (“Shah”) and Zilmil, Inc. (“Zilmil”) as alleged in *CFTC v. Sharf*, No. 3:17-cv-774 (M.D. Fla. filed July 10, 2017) (“*Zilmil*”), and therefore is responsible for such violations as a principal. 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, 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

II. FINDINGS

The Commission finds the following:

A. SUMMARY

Between at least August 2013 and August 2017 (“Relevant Period”), Giacca worked with Shah and Zilmil in connection with binary options affiliate marketing and fraudulently solicited more than 18,000 customers to open accounts and trade off-exchange binary options through websites operated by unregistered binary options brokers (“Brokers”).

During the Relevant Period, Giacca (directly or indirectly through other affiliates and sub-affiliates) sent over 94 million solicitations to prospective customers throughout the United States and abroad to lure them into opening and funding these illegal binary options accounts. For at least twenty-nine (29) campaigns, in coordination with Shah, Giacca created and disseminated solicitations that he knew contained numerous false and misleading material statements. Specifically, on websites, in sales videos, and in mass-distributed emails, Giacca offered prospective customers “free access” to trading software that would purportedly “autotrade” customers’ binary options accounts on behalf of customers. Among the numerous false statements, Giacca’s solicitations: (1) guaranteed that the trading software would automatically generate significant profits for customers once they opened and funded a binary options account with a “recommended” broker; (2) used actors pretending to be real users or owners of the trading software; and (3) included fake bank and trading statements, fictitious testimonials and fake “live” demonstrations, all of which falsely claimed profitable results generated by the automated trading software.

Giacca’s advertisements and solicitations advised prospective customers and customers of the value and advisability of trading binary options accounts through purported automated trading software, and consequently, Giacca acted as commodity trading advisor (“CTA”) pursuant to Section 1a(12) of the Act, 7 U.S.C. § 1a(12) (2012). In knowingly or recklessly making and disseminating material misrepresentations and false or misleading statements, Giacca committed fraud in violation of the Act and Regulations.

In accepting the offer of settlement in this matter, the Commission recognizes that that Giacca has substantially assisted the Division in its investigations and ongoing litigations involving binary options affiliate marketing fraud. In particular, Giacca informed the Division about certain marketing campaigns and/or supplied data for campaigns that the Division would not have otherwise obtained. Giacca also participated in proffers where he candidly provided useful information related to binary options solicitation fraud. Giacca entered into a cooperation agreement with the Division in June 2018. Giacca’s substantial cooperation is recognized in terms of substantially reduced sanctions, including the Commission’s determination not to impose a significant civil monetary penalty as would otherwise be warranted for this conduct.

B. RESPONDENT

Antonio Giacca is a 40-year old Italian citizen residing in the greater Miami, Florida area. Giacca is the owner and President of Petrafied, Inc. During the Relevant Period, Giacca used the name Antonio Giuditta in connection with his affiliate marketing activities, including when creating, launching, and disseminating binary options campaigns. Giacca has never been registered with the Commission in any capacity.

C. FACTS

Giacca began working as an affiliate marketer around 2009 or 2010. Affiliate marketing is a form of performance based marketing that is predominantly conducted via email solicitations and promotional materials made available on internet websites. An affiliate marketing campaign is a promotion of a product or service designed to convince the audience to take a specific action, including purchasing a product or service or opening and funding a binary options trading account. Affiliate marketing is referred to as a campaign or funnel because the advertising is designed to funnel (or “drive”) customers to the service provider or product owner. Affiliate marketing occurs in various business segments, including binary options,² internet marketing (“IM”), business opportunities (“BizOp”), foreign exchange (“Forex”), and, more recently, virtual currencies or cryptocurrencies.

Affiliate marketing in binary options generally involves the creation and bulk dissemination of solicitation materials promoting access to automated trading software—available for free upon opening and funding a binary options trading account—that purports to trade successfully on behalf of prospective customers. Affiliate marketers in binary options earn a flat commission from Brokers for every customer that opens and funds a trading account as a result of their solicitation.

Affiliate marketers in binary options like Giacca launch campaigns by sending out mass email solicitations designed to entice the recipients to click an embedded electronic link that routes the user to a binary options campaign website. To lure prospective customers through the binary options website’s funnel, Giacca (and other affiliate marketers) intentionally included numerous false and misleading representations about trading activity, results, risks, and profits in emails, websites, and promotional videos known in the affiliate marketing industry as video sales letters (“VSL”).

In late summer 2013, Shah persuaded Giacca to work with him in binary options affiliate marketing. Shah proposed that he would handle the backend operations and Giacca would create solicitation materials and recruit sub-affiliates to disseminate those solicitation materials. Giacca and Shah (and at times Affiliate1) brainstormed ideas for new campaigns together and then Giacca primarily created or procured the VSL and email solicitations. Giacca’s (and Shah’s) VSLs touted automated trading software by showing fake proof in the form of fabricated bank and trading account statements, fictitious “live” demonstrations, fake testimonials, and false guarantees of profits. Giacca worked with Shah until August 2017.

From the outset, Giacca knew the binary options solicitations he created and disseminated to cause customers to open accounts and trade binary options were materially false and misleading. In fact, Giacca went by the alias Giuditta in connection with his affiliate marketing activities to avoid tarnishing his real name. Giacca even joked with other affiliate marketers about pulling off their scams, targeting the elderly, doing a fundraiser for the customers to “put them back on track” to scam them again, and other similar statements.

During the Relevant Period, while working with Shah, Giacca launched at least twenty-nine (29) fraudulent binary options marketing campaigns, including: (1) The ATM Machine (3kpertrade.net; 2013); (2) System X (get1kpounds.com, the-1k-challenge.net; late 2013/early 2014);

² A binary option is a type of option contract in which the payout depends entirely on the outcome of a discrete event—usually a “yes/no” proposition. The yes/no proposition typically relates to whether the price of a particular asset—such as a currency pairing or commodity future—will rise above or fall below a specified amount at a specified date and time.

(3) Big Cash Giveaway (April 2014); (4) Secret Millionaires Club (April 2014); (5) Millionaires Society (May 2014); (6) 60kin60seconds (June 2014), (7) Insider Confessions (July 2014); (8) Secret Wealth Club (July 2014); (9) Profit Prophecy (September 2014); (10) Millionaire Conspiracy (November 2014); (11) The Truth About Cash (December 2014); (12) (Secret) Millionaire's Society (2014); (13) Free Profit Code (November 2014); (14) Money Platform (January 2015); (15) 60 Second Millionaire (March 2015); (16) Private Society (June 2015); (17) 7 Figure Club (August 2015); (18) Push Button Salary (September 2015); (19) 7 Figure Challenge (December 2015); (20) Profits with Cindy (2015); (21) Altronix App (February 2016); (22) Perpetual Formula (May 2016); (23) Million Dollar Challenge (May 2016); (24) Quantum Code (June 2016); (25) Zero Loss Formula (August 2016); (26) Unlimited Systems (late 2016/early 2017); (27) Millionaire's Club (2016); (28) Orion Code (2016); and (29) Infinity App (March 2017). For each launch, Giacca and Shah split the advertiser profits between themselves fifty-fifty, except when they partnered with others (including Affiliate1) and they each received a reduced portion of the total proceeds.

In each of these advertising campaigns, Giacca intentionally or recklessly included false and misleading statements about the purported automated trading software's profits, risk of loss, limited availability, and the system's functionality and performance. For example, in the Infinity App VSL, an actor falsely claimed: "Six years ago I developed this piece of software that makes money online 100% on autopilot 24hrs per day and it has NEVER failed to make profits for even a single day in the last 6 years." The video describes the trading software as "zero risk," includes fake bank statements, testimonials from actors about fake results, and even goes so far as to assert that "every single person using the Infinity App to this date has become a millionaire." None of those statements are true, nor do they reflect real trading activities and results from Infinity App.

Another VSL Giacca created promises that the Quantum Code trading software is the "only, 100% guaranteed way to make profits every day forever" with "No losses, 100% wins, 100% guaranteed simply because of near Quantum speed from our trading software." The actor playing a fictitious character named Michael Crawford shows a fake bank account statement with over forty-four million dollars in it purportedly as a result of using the Quantum Code and falsified screenshots showing over 7,000 trades placed and the same number won resulting in over \$1 billion in profits since 2006. Similar false and misleading statements and "proof" were a hallmark of Giacca's and Shah's VSLs to lure customers to make their way through the funnel and open and fund a binary options trading account so that they could get paid.

During the Relevant Period, Giacca's fraudulent solicitations on binary options campaign websites were viewed at least two million times; at least 18,000 customers opened a new binary options account at various firms/platforms and deposited at least \$4.6 million in initial investments into those accounts as a result.

Giacca quit working in the affiliate marketing industry in August 2017. Between August 2013 and August 2017, Giacca earned over \$6.5 million related to his binary options solicitation activities with and without Shah, approximately a third of which came from the twenty-nine (29) campaigns that he launched with Shah. For at least those twenty-nine (29) campaigns, Giacca had a direct role in and specific knowledge of the fraudulent nature of the solicitations disseminated to millions of prospective customers and customers.

On July 10, 2017, the Division filed a complaint in the Middle District of Florida against Shah, his company Zilmil, Inc. (and other parties) for alleged violations of the Act and Regulations in connection with binary options, including alleged fraudulent solicitations, between June 2013 and July

2017. Complaint at 1, 29-37, 39-43, *Sharf*, No. 3:17-cv-774 (filed July 10, 2017). As found above, Giacca worked with Shah and Zilmil during that period. Giacca was not named in that complaint.

Giacca has accepted full responsibility for his violations and cooperated with the Commission in its investigations and ongoing litigations related to binary options fraud. In particular, Giacca informed the Division about certain marketing campaigns and/or supplied data for campaigns that the Division would not have otherwise obtained. Giacca also participated in proffers where he candidly provided useful information related to binary options solicitation fraud. Giacca entered into a cooperation agreement with the Division in June 2018. Giacca's substantial cooperation is recognized in terms of substantially reduced sanctions, including the Commission's determination not to impose a significant civil monetary penalty as would otherwise be warranted for this conduct.

III. LEGAL DISCUSSION

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

Section 4(c)(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," contrary to any rule, regulation, or order of the Commission 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 (2018), 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 to establish a claim for futures and options fraud under section 4b(a) and 4c(b) of the CEA . . . the CFTC must demonstrate that the defendant made a material misrepresentation of presently existing or past fact with scienter).

For each of Respondent's twenty-nine (29) binary options campaigns, Giacca intentionally or recklessly created and/or disseminated solicitation materials regarding the automated binary options trading software that repeatedly misrepresented, among other things: (i) hypothetical and fictitious trading results as real results; (ii) outsized fake profits; (iii) the risk of loss; (iv) actors as true users of the Systems; (v) fake "proof" as real; (vi) the fictitious experience, background and skill of the "creators" of the Systems; (vii) the System's limited availability; and/or (viii) fabricated testimonials. Respondent violated Section 4c(b) of the Act and Regulation 32.4 when he intentionally or recklessly

created and disseminated binary options solicitation materials replete with material misrepresentations as described above.

B. Violation of Section 4o(1) of the Act: CTA Fraud

Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012), makes it unlawful for a commodity trading advisor (“CTA”), using the instrumentalities of interstate commerce, directly or indirectly:

- (A) Employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or
- (B) To engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

Section 1a(12) of the Act, 7 U.S.C. § 1a(12) (2012), defines CTA as any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in any swap or commodity option. *See CFTC v. Wall St. Underground, Inc.*, 281 F. Supp. 2d 1260, 1269 (D. Kan. 2003) (entering preliminary injunction on CTA fraud claims; defendants “acted as CTAs in that the trading systems they author and sell provide specific recommendations for clients and prospective clients to use to trade commodity futures and commodity options”), *aff’d*, 128 F. App’x 726 (10th Cir. 2005).

Section 4o(1) of the Act applies to CTAs regardless of whether or not they register with the Commission. *Wall St. Underground, Inc.*, 281 F. Supp. 2d at 1269-70; *CFTC ex rel. Kelley v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985).

Giacca acted as a CTA by advising potential customers through emails, websites and VSLs as to the value and advisability of trading in binary options using the advertised automated trading software that purported to trade in customers’ accounts on their behalf. Giacca earned compensation, not directly from customers, but as commissions for at least 18,000 customer accounts opened and funded as a result of solicitation materials for the twenty-nine (29) campaigns he launched with Shah. Therefore, Giacca acted as a CTA for compensation. *See CFTC v. Savage*, 611 F.2d 270, 279-80 (9th Cir. 1979) (“We do not believe that the definition of commodity trading advisor requires that the ‘compensation or profit’ flow directly from the person or persons advised” (citing CFTC Interpretive Letter No. 75-11 (1975-77 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 20,098 at 20,763 n.6)).

By the same conduct that violated Section 4c(b) of the Act and Regulation 32.4, Respondent violated Section 4o of the Act when he created and disseminated binary options solicitation materials replete with material misrepresentations and false statements as described above.

C. Violation of Section 6(c)(1) of the Act and Regulation 180.1(a)(1)-(3): Manipulative or Deceptive Devices

Section 1a(47)(A) of the Act, 7 U.S.C. § 1a(47)(A) (2012), defines “swap” to include, among other things, any agreement, contract, or transaction that: (a) is an option of any kind; (b) provides for payment dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency; or (c) provides on an executory basis for payments based on the value or level of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices,

quantitative measures, or other financial or economic interests or property of any kind, without also conveying an ownership interest in any 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).

Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), provides in relevant part, “[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, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate”

Regulation § 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a) (2018), provides in relevant part, that it shall be unlawful for any person, in directly or indirectly:

In connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, 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 material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; (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

By intentionally or recklessly engaging in the same conduct that violated Sections 4c(b) and 4o of the Act and Regulation 32.4, Respondent 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).

D. Violation of Regulation 4.41(a)(1)-(3), and (b)(1)-(2): Respondent’s Fraudulent Advertising

Regulation 4.41(a)(1)-(2), 17 C.F.R. § 4.41(a)(1)-(2) (2018), prohibits fraudulent advertising by a CTA. Regulation 4.41(a)(3) makes it unlawful for any CTA to refer to any testimonial, unless the advertisement or sales literature providing the testimonial prominently discloses, in pertinent part: (i) That the testimonial may not be representative of the experience of other clients; (ii) That the testimonial is no guarantee of future performance or success; and (iii) If, more than a nominal sum is paid, the fact that it is a paid testimonial. Regulation 4.41(b)(1) and (2) requires CTAs to include specific disclosures in immediate proximity to any simulated or hypothetical performance presented in advertisements.

Respondent acted as a CTA when launching twenty-nine (29) binary options advertising campaigns rife with materially false and misleading statements. Respondent’s promotional materials, including emails, websites, and VSLs, include testimonials without prominently disclosing for each testimonial that: (i) it may not represent the experience of other users of the advertised System; (ii) the testimonial was not a guarantee of future performance; and (iii) the testimonial was entirely fake and portrayed by paid actors.

Further, Respondent's promotional materials, including emails, websites and VSLs, further depicted fabricated performance results of binary options transactions in, among other instruments, commodity futures, options, swaps and forex, without displaying the required disclosure in immediate proximity to those statements. To the contrary, the VSLs repeatedly referred to trading performance, activity and results as real and/or "live". This conduct violated Regulation 4.41(a)(1)-(3) and (b)(1)-(2). *See Wall St. Underground, Inc.*, 281 F. Supp. 2d at 1270 (finding that a CTA's advertising of a trading system in a manner that was misleading and omitted material information regarding commodity trading violated Regulation 4.41(a)); *CFTC v. Heffernan*, 245 F.Supp.2d 1276, 1296-99 (S.D. Ga. 2003) (finding CTA advertising of hypothetical results without the required disclaimer regarding such results violated Regulation 4.41(b)).

E. Aiding & Abetting Shah's and Zilmil's Binary Options Fraud

As alleged in the *Zilmil* complaint, between at least June 2013 and July 2017, Shah and Zilmil, Inc. violated Sections 4c(b), 4o(1), and 6(c)(1) of the Act, and Regulations 4.41(a), 32.2, 32.4, and 180.1(a), in connection with binary options, including by disseminating alleged fraudulent solicitations for customers to use trading systems to trade binary options. During the relevant period, Giacca created, or assisted in the creation of, and disseminated fraudulent solicitations used in binary options advertising campaigns that Giacca launched with Shah and Zilmil, Inc. Giacca also disseminated (directly and/or through other affiliates he recruited) additional fraudulent solicitations that others created for Shah's and Zilmil Inc.'s binary options campaigns.

Giacca willfully aided and abetted the acts constituting Shah's and Zilmil's violations of Sections 4c(b), 4o(1), and 6(c)(1) of the Act and Regulations 4.41(a), 32.2, 32.4, and 180.1(a), as alleged in the *Zilmil* complaint. Giacca is therefore liable for Shah's and Zilmil Inc.'s violations pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a)(2012).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Sections 4c(b), 4o(1), and 6(c)(1) of the Act, 7 U.S.C. §§ 6c(b), 6o(1), 9(1) (2012), and Regulations 4.41(a)(1)-(3) and (b)(1)-(2), 32.4, and 180.1(a)(1)-(3), 17 C.F.R. §§ 4.41(a)(1)-(3), (b)(1)-(2), 32.4, 180.1(a)(1)-(3) (2018), by creating and disseminating binary options advertising campaigns that fraudulently solicited prospective customers and customers to open an account with a Broker and trade in binary options using purported successful automated trading software.

The Commission also finds that Respondent willfully aided and abetted Shah's and Zilmil, Inc.'s violations of Sections 4c(b), 4o(1), and 6(c)(1) of the Act and Regulations 4.41(a), 32.2, 32.4, and 180.1(a), as alleged in the *Zilmil* complaint, pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a)(2012).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which he, without admitting or denying the findings and conclusions herein:

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 he 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 (2018), relating to, or arising from, this proceeding;
 7. Any and all claims that he 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 a civil monetary penalty or 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;
- 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), 4o(1), and 6(c)(1) of the Act, 7 U.S.C. §§ 6c(b), 6o(1), 9(1) (2012), and Regulations 4.41(a)(1)-(3) and (b)(1)-(2), 32.4, and 180.1(a)(1)-(3), 17 C.F.R. §§ 4.41(a)(1)-(3), (b)(1)-(2), 32.4, 180.1(a)(1)-(3) (2018), by creating and disseminating binary options advertising campaigns that fraudulently solicited prospective customers and customers to open an account with a Broker and trade in binary options using purported successful automated trading software;
 2. Makes findings by the Commission that Respondent willfully aided and abetted Shah's and Zilmil, Inc.'s violations of Sections 4c(b), 4o(1), and 6(c)(1) of the Act and Regulations 4.41(a), 32.2, 32.4, and 180.1(a), as alleged in the *Zilmil* complaint, pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a)(2012);

3. Orders Respondent to cease and desist from violating Sections 4c(b), 4o(1), and 6(c)(1) of the Act and Regulations 4.41(a)(1)-(3) and (b)(1)-(2), 32.4, and 180.1(a)(1)-(3), by creating and disseminating binary options advertising campaigns that fraudulently solicit prospective customers and customers to open an account with a Broker and trade in binary options using purported successful automated trading software;
4. Orders Respondent to cease and desist from willfully aiding and abetting Shah's and Zilmil, Inc.'s violations of Sections 4c(b), 4o(1), and 6(c)(1) of the Act and Regulations 4.41(a), 32.2, 32.4, and 180.1(a), as alleged in the *Zilmil* complaint, pursuant to Section 13(a) of the Act;
5. 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)), and all registered entities shall refuse him trading privileges; and
6. Orders Respondent and his successors and assigns 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), 4o(1), and 6(c)(1) of the Act, 7 U.S.C. §§ 6c(b), 6o(1), 9(1) (2012), and Regulations 4.41(a)(1)-(3) and (b)(1)-(2), 32.4, and 180.1(a)(1)-(3), 17 C.F.R. §§ 4.41(a)(1)-(3), (b)(1)-(2), 32.4, 180.1(a)(1)-(3) (2018), by creating and disseminating binary options advertising campaigns that fraudulently solicited prospective customers and customers to open an account with a Broker and trade in binary options using purported successful automated trading software.
- B. Respondent shall cease and desist from aiding and abetting Shah's and Zilmil, Inc.'s violations of Sections 4c(b), 4o(1), and 6(c)(1) of the Act and Regulations 4.41(a), 32.2, 32.4, and 180.1(a), as alleged in the *Zilmil* complaint;
- C. 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)), and all registered entities shall refuse him trading privileges; and
- D. Respondent shall comply with the following conditions and undertakings set forth in the Offer:
 1. Public Statements: Respondent agrees that neither he nor any agents or employees under his 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 his authority or control understand and comply with this agreement.

2. Respondent agrees that he shall never, directly or indirectly:
 - a. enter into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2018)), for Respondent’s own personal accounts or for any accounts in which Respondent has a direct or indirect interest;
 - b. have any commodity interests traded on Respondent’s behalf;
 - c. control or direct 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. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;
 - e. apply for registration or claim exemption from registration with the Commission in any capacity, and engage 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) (2018); and/or
 - f. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2018)), 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. Respondent shall pay disgorgement in the amount of two million and six hundred thousand (\$2,600,000) (the “Disgorgement Obligation”), plus post-judgment interest, within ten (10) days of the date of the entry of this Order. If the Disgorgement Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue on the Disgorgement Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

To effect payment by Respondent and the distribution to customers, the Commission appoints the National Futures Association as “Monitor.” The Monitor shall receive payments of the Disgorgement Obligation from Respondent and make distributions as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, it shall not be liable for any action or inaction arising from its appointment as Monitor other than actions involving fraud.

Respondent shall make his payments of the Disgorgement Obligation under this Order in the name of the “BO Fraud Settlement Fund” and shall send such payments by electronic funds transfer, or U.S. postal money order, certified check, bank cashier’s check, or bank money order to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under a cover letter that identifies the paying Respondent and the name and docket number of

this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to (i) the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and (ii) Regional Counsel, Division of Enforcement, Commodity Futures Trading Commission, 525 West Monroe, Suite 1100, Chicago, Illinois 60661.

The Securities and Exchange Commission ("SEC") is seeking disgorgement from Respondent for the same conduct at issue in this case. Consequently, any disgorgement that Respondent pays to the SEC for his binary options solicitation fraud and aiding and abetting binary options solicitation fraud shall result in a dollar for dollar reduction of Respondent's disgorgement obligation in this matter.

The Monitor shall oversee Respondent's Disgorgement Obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to the Respondent's customers or may defer distribution until such time as the Monitor may deem appropriate. In the event that the amount of payments of the Disgorgement Obligation to the Monitor are of a de minimis nature such that the Monitor determines that the administrative cost of making a restitution distribution is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission, as discussed below.

To the extent any funds accrue to the U.S. Treasury for satisfaction of Respondent's Disgorgement Obligation, such funds shall be transferred to the Monitor for disbursement by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

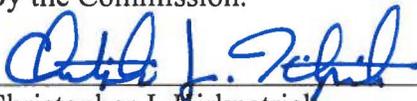
MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 181
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, the Monitor shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. The Monitor shall accompany payment of the Disgorgement Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The Monitor shall simultaneously transmit copies of the cover letter and the form of payment to: (i) the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and (ii) Regional Counsel, Division of Enforcement, Commodity Futures Trading Commission, 525 West Monroe, Suite 1100, Chicago, Illinois 60661.

4. Cooperation with Monitor: Respondent shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Respondent's customers, whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any restitution payments. Respondent shall execute any documents necessary to release funds that he has in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Disgorgement Obligation.
5. Cooperation, in General: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action. Respondent must also comply with the terms of the Cooperation Agreement entered into in June 2018 with the CFTC.
6. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission or the Monitor of any partial payment of Respondent's Disgorgement Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
7. Change of Address/Phone: Until such time as Respondent satisfies in full his Disgorgement Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to his telephone numbers and mailing addresses within ten (10) 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 27, 2018