

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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8:16 am, Sep 27, 2018

In the Matter of:

SHMUEL POLLEN, aka MIKE
WILLIAMS,

Respondent.

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) **CFTC Docket No. 18-43**
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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 from at least January 2014 to at least August 2016 (“Relevant Period”), Shmuel Pollen (“Pollen” or “Respondent”) willfully aided and abetted at least two affiliate marketers’ violations of Sections 4c(b), 4o(1), and 6(c)(1) of the Commodity Exchange Act (the “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). 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 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

Between January 2014 and August 2016 (“Relevant Period”), affiliate marketers hired Pollen, who used the alias Mike Williams, to draft scripts, emails, and content for Internet pages (“Copy”) to solicit millions of prospective customers to open accounts and trade off-exchange binary options through websites operated by unregistered binary options brokers (“Broker(s”). Pollen drafted binary options Copy for at least nine binary options advertising campaigns launched by two affiliate marketers. Those affiliate marketers used Pollen’s work to lure them into opening and funding these illegal binary options accounts. Thousands of customers opened binary options trading accounts in connection with the binary options campaigns that Pollen worked on.

Pollen knew that the Copy he created included numerous false and misleading statements related to the advertised offer to prospective customers for “free access” to trading software that would purportedly “autotrade” customers’ binary options accounts on their behalf. Among the numerous false statements, the Copy that Pollen created on behalf of affiliate marketers: (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. Pollen also knew that his affiliate marketer clients would ultimately disseminate the fraudulent solicitations that he helped draft to prospective customers via email and/or publish videos created from his scripts on campaign websites to lure them to open accounts and trade off-exchange binary options.

Pollen willfully aided and abetted at least four affiliate marketers’ fraud and earned eighty-five thousand dollars \$85,000 for doing so.

B. RESPONDENT

Shmuel Pollen, also known as Mike Williams, resides in Morristown, New Jersey. Pollen has never been registered with the Commission in any capacity.

C. FACTS

Pollen has worked as a copywriter for affiliate marketing since at least 2012. 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

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.

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 Pollen’s clients 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, Pollen’s affiliate marketer clients used solicitation materials containing numerous false and misleading representations about trading activity, results, risks, and profits.

Pollen became well known for his skill as a copywriter in the affiliate marketing industry. Pollen wrote scripts, content for websites, and targeted solicitation emails for various business segments, charging thousands of dollars for his work. Beginning in or around 2014, Pollen began writing Copy for affiliate marketing related to binary options. Pollen knew that the scripts he wrote would be converted into sales videos and disseminated to the affiliate marketers’ prospective customers and published on the Internet.

All of the scripts written by Pollen were complete fiction and the testimonials called for by the scripts were fabricated and not based on actual experiences. Pollen made up the characters’ names—sometimes using a “random name generator” available on Google—and called for the use of props and screen shots to evidence wealth. As a result, all of the sales videos that were later created based on Pollen’s scripts were fake. Pollen also included a “squeeze” or fake limited availability and time restriction in his scripts to create a sense of urgency for prospective customers to invest, and his scripts consistently guaranteed that customers would earn large profits.

Affiliate 1 had worked with Pollen since approximately May 2012 and retained Pollen to write Copy for binary options for the first time in or around April 2014. Affiliate1 told Pollen that he wanted a script related to binary options automated trading software that would trade on behalf of customers and to “make it sound good.” Pollen reviewed other binary options sales videos and websites on the Internet and created a fictitious story with characters purporting to be

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.

real users and who earned real profits from the advertised software. At times, Affiliate 1 provided Pollen with “proof” screenshots depicting income and/or profits to incorporate into the scripts. Pollen knew that the screenshots did not represent real users or reflect their experience with the software he wrote about. Pollen prepared at least six scripts for Affiliate1 related to binary options, including: Cash Generator, Quick Cash System (“QCS”), Auto Money App (“AMA”), Secret Money Society (“SMS”), Free Money System (“FMS”) and Black Box Binary (“BBB”).

All of the scripts Pollen wrote for Affiliate 1 were fictitious, included fake testimonials, fake proof and were designed to generate the most interest from prospective customers. The scripts often guaranteed outlandish profits in record time and downplayed or explicitly disclaimed any risks. For example, a character in the FMS script promised, “I’m going to make you a millionaire in 3 months tops[.]” Similarly, a character in the SMS script stressed: “And when you do get to the end of this video, you will also be rewarded with a guaranteed \$1000 in your first 60 seconds and \$10,000 in your first two days for free . . . There will be no losses. None at all.”

The AMA script went further:

- “In sum total . . .we know . . . you will be earning at least \$300,000 per month – also known as . . . \$3.6 million dollars per year . . . starting just 30 days from now..just [sic] as sure as 1 plus 1 equals 2. Gosh, I love numbers! These are mathematical certainties”
- “The Auto Money App only picks winning trades These brokers only work for the Auto Money App and they are designed to make sure your initial deposit turns you into a millionaire in 90 days or less.”

All of these statements were false.

As for the testimonials, they were drafted to appear as realistic as possible. Pollen’s script for AMA specified the approximate age of the characters for the testimonials, attributed and personas like “a vet . . . Infantry officer in the First Division in Vietnam,” and described props to use, including first showing an “old house,” and then a “big house” to emphasize the wealth that AMA helped one purported user achieve. The AMA testimonials also had various instructions to show “HUGE SHORT TERM PROOF,” “PROOF,” “show screenshot of \$140k trustfund.”

To further persuade prospective customers, Pollen drafted scripts that assured the audience that the statements were real when in fact everything was fake. For example, in the SMS script, a character had the following lines:

- “See anyone can throw numbers around and whip up some proof shots. All the scammers do it. This isn’t that. This is a completely different playing field. And you’re going to see real proof . . . you can’t deny . . . and . . . in a way you’ve never seen before in your life.”

- “Everything I’m about to tell you is 100% real and was experienced by me firsthand.”

Affiliate 1 used VideoProducer 1 to create movies using the scripts Pollen drafted and then incorporated those videos into the solicitation materials for those campaigns. Affiliate 1’s binary options campaigns were successful and widely disseminated to the public. For example, the videos made using scripts Pollen drafted for QCS, AMA, SMS, and FMS were viewed over 150,000 times on the internet and resulted in over sixty-five thousand (65,000) customers opening binary options accounts. Affiliate 1 paid Pollen approximately seventy-eight thousand dollars (\$78,000) during the Relevant Period.

Pollen also assisted Affiliate 2 with two binary options campaigns: Larry’s Cash Machine (“LCM”), around late 2014, and Binary Hijack (“BHJ”), around the spring of 2015. Affiliate 2 paid Pollen at least seven thousand dollars (\$7,000) for those campaigns. LCM featured a fictitious character of a Harvard Professor and others posing as real users for purposes of providing fake testimonials. The script called for fake bank and trading account statements showing purported profits resulting from use of LCM trading in binary options involving gold and currency pairings. The LCM script included the following material false and misleading statements:

- A Harvard professor invented software that has generated over \$38 million in binary options profits in just the prior 36 months.
- The “100 percent automated” software operates on an “average mathematical certainty” of 97.8% and turns \$250 into \$4,000 in one day.
- “Julia,” a single mother who needs money, opens an account and deposits \$250, returns to find her account balance has increased to \$1,400. Some 11 months later, Julia returns to say she has \$1.8 million in binary trading profits and a new house.
- A testimonial claiming LCM made someone \$657 in 60 seconds.
- A user saying after depositing \$250, the account showed \$1,489.00 within an hour.
- A testimonial from a hedge fund manager who said his trading profits increased by 544% using LCM.
- A pastor who used profits from LCM to build a new church.
- 100 test subjects earned \$148 million in less than a year.

- “This is not our estimate, this is our track record. A mathematical certainty which is why I can absolutely guarantee with everything behind my name that you’ll be a millionaire one year from now.”

The BHJ script called for the use of fake trading and bank account statements showing fake profits. For example, it claimed that customers had taken \$800 and turned it into \$19,954 in five days by trading in forex binary options using the BHJ trading software. The videos created from those two scripts were viewed over 300,000 times and resulted in approximately three thousand (3,000) customers opening binary options accounts.

During the Relevant Period, Pollen also authored numerous false and misleading statements: (1) for Internet pages that supported Affiliate 1’s and Affiliate 2’s binary options campaigns; and (2) in “swipes” which were short emails to investors that contained false statements that he made available to Affiliate 1 and Affiliate 2 to support their binary options campaigns.

In all of his work with Affiliates 1 and 2, Pollen knew that representations made in his scripts, web pages, and emails were all false and misleading. He even used an alias when working as a copywriter because he did not want to sully his real name. Pollen knew the materials he created for binary options affiliate marketers could trick recipients into trading binary options. Pollen eased his conscious by relying on the fact that customers could get a refund or withdraw their funds if they were dissatisfied. Pollen also adopted a “don’t ask, don’t tell” policy to avoid confirming the scope of the wrongdoing. Pollen continued to create Copy with material false and misleading statements until at least August 2016.

Between January 2014 and August 2016, Pollen willfully aided and abetted at least two affiliate marketers’ fraud in connection with at least eight binary options advertising campaigns.

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 the eight (8) binary options Copy that Pollen created for Affiliates 1 and 2, Affiliates 1 and 2 violated Section 4c(b) of the Act and Regulation 32.4 because they intentionally or recklessly created and/or disseminated solicitations replete with material misrepresentations as described above.

A person is liable for aiding and abetting where that person: (A) had knowledge of the principal's intent to commit a violation; (B) had the intent to further that violation; and (C) committed some act in furtherance of the principal's objective. *In re Nikkhah*, CFTC No. 95-13, 2000 WL 622872, at*11-12 and n.28 (May 12, 2000); *see also In re Richardson Sec., Inc.*, CFTC No. 78-10, 1981 WL 26081, at*6-8 (Jan. 27, 1981) (holding to be liable for aiding and abetting under the Act, one must knowingly associate himself with an unlawful venture, participate in it as something that he wishes to bring about, and seek by his actions to make it succeed). Although knowing participation in the primary wrongdoer's conduct is required, knowledge of the unlawfulness of such conduct need not be demonstrated. *In re Lincolnwood Commodities, Inc.*, CFTC No. 78-48, 1984 WL 48104, at *27-29 (Jan. 31, 1984). Knowing participation can be inferred from the surrounding facts and circumstances. *Id.*

Pollen knew that the solicitation materials he created for Affiliates 1 and 2 regarding the automated binary options trading software 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. Pollen willfully assisted affiliate marketers' fraud by creating Copy that Pollen knew would be disseminated to prospective customers to persuade them to open accounts and trade binary options. Therefore, Pollen is liable for Affiliate 1's and Affiliate 2's fraud pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a) (2012), because he willfully aided and abetted their acts, misrepresentations and omissions 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*, 281 F. Supp. 2d at 1269-70; *CFTC ex rel. Kelley v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985).

Affiliates 1 and 2 acted as CTAs by advising potential customers through emails, websites and sales videos 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. Pollen’s binary options affiliate marketer clients earned compensation, not directly from customers, but as commissions for each trading account opened and funded by a customer as a result of solicitation materials. Therefore, Pollen’s binary options affiliate marketer clients acted as CTAs 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)). Pollen assisted Affiliates 1 and 2 in acting as CTAs by creating the Copy that they used to advise potential customers as part of their solicitations.

By the same conduct that violated Section 4c(b) of the Act, Affiliates 1 and 2 violated Section 4o of the Act when they created and disseminated binary options solicitation materials replete with material misrepresentations and false statements as described above.

Pollen willfully aided and abetted Affiliates 1’s and 2’s acts, misrepresentations and omissions described above. Therefore, Pollen is liable for Affiliate 1’s and Affiliate 2’s fraud pursuant to Section 13(a) of the Act.

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 properly 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 as the Commission shall promulgate”

Regulation § 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (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 materials 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, Affiliates 1 and 2 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). Pollen willfully aided and abetted Affiliates 1’s and 2’s acts, misrepresentations and omissions described above.

D. Violation of Regulation 4.41(a)(1)-(3) and (b)(1)-(2): 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)-(2) requires CTAs to include specific disclosures in immediate proximity to any simulated or hypothetical performance presented in advertisements.

Affiliates 1 and 2 acted as CTAs in connection with the nine (9) binary options advertising campaigns that included the Copy that Pollen created or helped to create. That Copy (and the related sales videos based on the scripts) included 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, the Copy Pollen created for the nine (9) binary options campaigns 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 Copy 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*, 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)).

By this conduct, Affiliates 1 and 2 violated Regulation 4.41(a)(1)-(3) and (b)(1)-(2). Pollen willfully aided and abetted Affiliates 1’s and 2’s violations of Regulation 4.41(a)(1)-(3), and (b)(1)-(2).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent willfully aided and abetted at least two affiliate marketers’ violations of 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/or helping to create Copy used in the affiliate marketers’ binary options advertising campaigns that fraudulently solicited prospective customers and customers to access purported automated trading software guaranteed to enter profitable trades in binary option accounts which customers were directed to open with recommended Brokers. Pollen is liable for their violations 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 pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a) (2012), Respondent is liable for willfully aiding and abetting at least two affiliate marketers' violations of 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/or helping to create Copy used in the affiliate marketers' 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. Orders Respondent to cease and desist from willfully aiding and abetting at least two affiliate marketers' violations of 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/or helping to create Copy for use in the affiliate marketers' 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;

3. Orders Respondent to pay a civil monetary penalty in the amount of forty-two thousand and five hundred dollars (\$42,500) (the “CMP Obligation”), plus post-judgment interest within ten (10) days of the date of entry of this Order;
4. 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
5. 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 willfully aiding and abetting at least two affiliate marketers’ violations of 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),(b), 32.4, and 180.1(a) (1)-(3), 17 C.F.R. §§ 4.41(a),(b), 32.4, 180.1(a)(1)-(3) (2018), by creating and/or helping to create Copy for use in the affiliate marketers’ 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.
- 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)), and all registered entities shall refuse them trading privileges.
- C. Respondent shall pay the CMP Obligation in the amount of forty-two thousand and five hundred dollars (\$42,500), within ten (10) days of the date of entry of this Order. If the CMP 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 CMP 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).

Respondent shall pay the CMP Obligation and any post-judgment interest 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, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with 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 the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- 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 Respondents' own personal accounts or for any accounts in which Respondents have 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 eighty-five thousand dollars (\$85,000) (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 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.

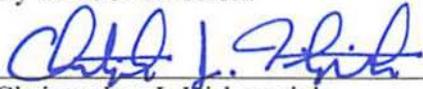
4. Cooperation with Monitor: Respondent shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Respondent's customers, whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any 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.
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