

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

GELFMAN BLUEPRINT, INC.,
and NICHOLAS GELFMAN,

Defendants.

Case No. 17-CV-07181 (PKC)

**CONSENT ORDER FOR PERMANENT INJUNCTION,
CIVIL MONETARY PENALTY, AND OTHER EQUITABLE RELIEF
AGAINST DEFENDANT NICHOLAS GELFMAN**

I. INTRODUCTION

On September 21, 2017, Plaintiff Commodity Futures Trading Commission (“Plaintiff” or “Commission”) filed a Complaint for Injunctive and Other Equitable Relief and for Civil Monetary Penalties Under the Commodity Exchange Act and Commission Regulations (“Complaint”) against Defendants Gelfman Blueprint, Inc. (“GBI”) and Nicholas Gelfman (“Gelfman”) (collectively, “Defendants”) pursuant to Section 6c(a) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 13a-1 (2012). Default was entered as to GBI on December 20, 2017.

II. CONSENTS AND AGREEMENTS

To effect settlement of all charges alleged in the Complaint against Gelfman without a trial on the merits or any further judicial proceedings, Gelfman—

1. Consents to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendant Nicholas Gelfman (“Consent Order”);

2. Affirms that he has read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;

3. Acknowledges service of the summons and Complaint;

4. Admits the jurisdiction of this Court over him and the subject matter of this action pursuant to 28 U.S.C. § 1331 (2012), 28 U.S.C. § 1345 (2012), and Section 6c of the Act, 7 U.S.C. § 13a-1 (2012);

5. Admits the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1-26 (2012);

6. Admits that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012);

7. Waives:

(a) 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 Commission Regulations (“Regulations”), 17 C.F.R. pt. 148 (2017), relating to, or arising from, this action;

(b) Any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-874 (1996), (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 action;

(c) Any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and

(d) Any and all rights of appeal from this action;

8. Consents to the continued jurisdiction of this Court over him for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if Gelfman now or in the future resides outside the jurisdiction of this Court;

9. Agrees that he will not oppose enforcement of this Consent Order on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and hereby waives any objection based thereon;

10. Agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect his:

(a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Gelfman shall comply with this agreement, and shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement;

11. Admits to all of the findings made in this Consent Order and all of the allegations in the Complaint;

12. In *New York v. Nicholas Gelfman*, Dkt. No. 2017NY049091 (N.Y.C. Crim. Ct. Mar. 22, 2018), Gelfman pleaded guilty to violating N.Y. Penal Law 155.25. In connection with that plea, Gelfman admitted the facts set out in the transcript of his plea allocution, a copy of which is attached as Exhibit A to this Order, and those same facts are admitted as if set forth in this Order;

13. Agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 51 of Part VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him, whether inside or outside the United States; and

14. Agrees that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against him in any other proceeding.

III. FINDINGS AND CONCLUSIONS

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction, and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), as set forth herein. The findings and conclusions in this Consent Order are not binding on any other party to this action.

A. Findings of Fact

The Parties to This Consent Order

15. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1-27(f) (2012), and the Regulations promulgated thereunder, 17 C.F.R. pts. 1-190 (2017).

16. Defendant Nicholas Gelfman is a resident of Brooklyn, New York. Gelfman was the CEO and Head Trader of GBI. Gelfman has never been registered with the Commission. Gelfman was a controlling person of GBI, a New York corporation based in Staten Island, New York, that was incorporated on August 7, 2014. GBI has never been registered with the Commission.

Gelfman's Solicitation Fraud, Misappropriation, and False Statements in Violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Commission Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2017)

17. Since at least 2014 through at least January 2016 (the "Relevant Period"), Defendants Gelfman and GBI, by and through its officers, agents, and employees operated a Bitcoin Ponzi scheme in which they fraudulently solicited participation in a pooled fund that purportedly employed a high-frequency, algorithmic trading strategy, executed by Defendants' computer program called "Jigsaw," to trade the virtual currency Bitcoin, a commodity in interstate commerce. During the Relevant Period, Gelfman and GBI obtained more than approximately \$600,000 through these fraudulent solicitations from at least eighty customers ("GBI Customers"), who invested amounts ranging from a few hundred dollars to tens of thousands of dollars, for the purpose of entering into contracts of sale of Bitcoin, a virtual currency, through electronic web-based Bitcoin trading platforms based in various states and countries. In fact, the strategy was fake, the purported performance reports were false, and—as in all Ponzi schemes—payouts of supposed profits to GBI Customers in actuality consisted of other customers' misappropriated funds.

18. Defendants fraudulently solicited potential GBI Customers by making false and misleading claims and omissions about the performance and reliability of Jigsaw. Then, once GBI Customers invested in the fraudulent scheme, Defendants attempted to conceal their fraudulent solicitations and misappropriation of funds through issuing false reports to GBI

Customers. In this regard, Defendants prepared and conveyed to potential and actual GBI Customers numerous solicitation materials, asset and performance reports, and other materials: (1) misrepresenting that GBI Customers averaged a 7-9% *monthly* increase in their Bitcoin balances net of all fees through Defendants' risk-protected strategy, when in fact they did not; (2) misrepresenting in individualized performance and balance reports that GBI Customers owned specific amounts of Bitcoin, when in fact those customers did not; and (3) misrepresenting that GBI's assets and performance were audited by a certified public accountant ("CPA"), when in fact they were not. In reality, the strategy was fake, the supposed trading results were illusory, and any payouts of supposed profits to investors in fact were derived from funds fraudulently obtained from other investors.

19. In an attempt to conceal the scheme, Gelfman staged a fake computer "hack" that supposedly caused the loss of nearly all GBI Customer funds. This was a lie. Later, again trying to conceal the full extent of the fraud, Gelfman claimed he had stolen only \$25,000. But this too was a lie. In fact, Defendants misappropriated virtually all of the approximately \$600,000 solicited from GBI Customers for improper and unauthorized uses, such as to pay GBI business expenses and to wrongfully enrich Gelfman. As a result, GBI Customers have lost most if not all of their invested funds due to Defendants' fraud and misappropriation.

20. During the Relevant Period, Gelfman and GBI, by and through its officers, employees, or agents, solicited customers in Manhattan, Staten Island, and elsewhere to invest in GBI's fund. Gelfman solicited customers, and received and directed deposits, withdrawals, and transfers of GBI Customer funds on behalf of GBI. Defendants' solicitations to potential GBI Customers to participate in GBI's pooled fund included false and misleading representations and omissions of material facts—in short, lies and deceit—about the profitability and safety of

investing in GBI. Defendants made these false and misleading representations and omissions of material facts to potential customers as well as existing GBI Customers on the GBI website, in marketing materials, in internet social media and chatroom websites, and in person knowingly or with reckless disregard for the truth.

21. During the Relevant Period, Gelfman and GBI touted the high investment performance and minimal risk of Defendants' high-frequency, algorithmic trading computer program (or "bot") named Jigsaw through marketing materials, the GBI website, internet chatrooms, in social media, and in person. Such statements by Gelfman and GBI by and through its officers, employees, or agents to potential and Actual GBI Customers were false and misleading claims and omissions of material facts. During the Relevant Period, Defendants' primary Bitcoin trading account for its supposed Jigsaw trading strategy was at an international virtual currency exchange, under the name of TMJigsaw ("Defendants' Jigsaw trading account"). In fact, the account records of Defendants' Jigsaw trading account reveal only infrequent and unprofitable trading.

22. Likewise, Defendants' Bitcoin under management was far, far less than falsely stated to prospective and actual GBI Customers. Defendants' Jigsaw trading account records show a Bitcoin balance of less than 270 Bitcoin as of early July 2015 (equivalent to approximately \$73,000 using the then-prevailing exchange rate), no Bitcoin trading activity at all after early July 2015, and a Bitcoin balance of zero beginning in early August 2015.

23. Defendants were fiduciaries of GBI Customers. Despite this, during the Relevant Period Defendants perpetuated their fraudulent scheme by providing GBI Customers false reports and account statements. During the Relevant Period, for example, GBI's website falsely offered GBI Customers' access to their current balances, deposits, and withdrawals though the

GBI website's "interactive customer dashboard." Once GBI Customers had invested in GBI, Defendants provided GBI Customers with password-protected access to the dashboard, a restricted area of Defendants' website where GBI Customers could access and view account statements and reports purporting to show their account balances and trading profits or losses. The account and performance statements provided by the dashboard misrepresented, and provided false and misleading descriptions of, trading activity and account balances.

24. In or around July to October 2015, Defendants obtained a series of one-page documents from an accountant purporting to state GBI's assets under management, specifically, the amount of GBI's balance at a particular Bitcoin exchange as of a particular date. These documents obtained from the accountant reflected that GBI's assets under management held at the specific exchange, an international platform advertised as the "world's largest and most advanced cryptocurrencies exchange," were increasing in value each month and, as of October 2015, were in excess of \$840,000. These statements were false and misleading representations and omissions of material facts. Defendants fraudulently obtained the one-page account-balance documents from the accountant by providing the accountant with information Defendants knew to be misleading and false, such as false account or balance statements that Gelfman had generated with the intent to deceive. Referring to this accountant and these documents, Defendants then falsely represented to potential and actual GBI Customers that GBI had monthly CPA audited results and asserted balances under management according to the last CPA audit.

Gelfman's Liability as a Controlling Person of GBI

25. Gelfman was CEO and Head Trader of GBI. Gelfman solicited investors on behalf of GBI, created and controlled the performance and investment information in solicitation materials, created and controlled the content of GBI's website, oversaw and controlled GBI's

trading of Bitcoin, was a signatory to GBI bank accounts, and generated account information on behalf of GBI. Gelfman also controlled the Jigsaw trading account.

Gelfman Acted as Agent for GBI

26. Through his actions as CEO and head trader overseeing Bitcoin trading by GBI, managing the purported Jigsaw bot, and calculating GBI purported performance results, and thus profits and fees, as well as through his additional actions of marketing GBI to potential investors, soliciting investors, providing information to the accountant during reviews of GBI's assets under management, and providing account information to GBI Customers, Gelfman acted in the scope of his employment and on behalf of GBI.

B. Conclusions of Law

Jurisdiction and Venue

27. The Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 (2012) and 28 U.S.C. § 1345 (2012). 7 U.S.C. § 13a-1 authorizes the Commission to seek injunctive and other relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging in, or is about to engage in any act or practice constituting a violation of any provision of the Act, or any rule, regulation, or order thereunder.

28. Venue properly lies in this District pursuant to 7 U.S.C. § 13a-1(e) because Defendants are found in, inhabit, or transact business in this District, and because acts and practices in violation of the Act occurred within this District, among other places.

Gelfman's Violations of Section 6(c)(1) of the Act and Regulation 180.1(a)

29. Virtual currencies such as Bitcoin are encompassed in the definition of "commodity" under Section 1a(9) of the Act, 7 U.S.C. § 1a(9) (2012).

30. 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a) make it unlawful for any person, in connection with contracts of sale of any commodity in interstate commerce, including virtual

currencies such as Bitcoin, to intentionally or recklessly: (1) use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; (2) make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; or (3) engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person.

31. By the conduct described in the Complaint and in paragraphs 1 through 26 above, Gelfman intentionally or recklessly, in connection with contracts of sale of a commodity in interstate commerce, the virtual currency Bitcoin: (1) used or employed, or attempted to use or employ, a manipulative device, scheme, or artifice to defraud; (2) made, or attempted to make, untrue or misleading statements of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; and (3) engaged, or attempted to engage, in an act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person, in violation of 7 U.S.C. § 9(1)(a) and 17 C.F.R. § 180.1(a).

32. By the conduct described in the Complaint and in paragraphs 1 through 26 above, GBI, by and through its officers, employees, or agents, intentionally or recklessly, in connection with contracts of sale of any commodity in interstate commerce, the virtual currency Bitcoin: (1) used or employed, or attempted to use or employ, a manipulative device, scheme, or artifice to defraud; (2) made, or attempted to make, untrue or misleading statements of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; and (3) engaged, or attempted to engage, in an act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person, in violation of 7 U.S.C. § 9(1)(a) and 17 C.F.R. § 180.1(a).

Controlling Person

33. Defendant Gelfman controlled Defendant GBI, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, GBI's acts in violation of the Act and Regulations; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Defendant Gelfman is liable for GBI's violations of 7 U.S.C. § 9(1)(a) and 17 C.F.R. § 180.1(a).

Liability of Principal for Acts of Agent

34. The acts, omissions, and failures of Gelfman described in this Complaint occurred within the scope of his agency, employment, and office at GBI. Accordingly, GBI is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2017), as principal for its agent's acts, omissions, or failures in violation of 7 U.S.C. § 9(1)(a) and 17 C.F.R. § 180.1(a).

Likelihood of Future Violations

35. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Gelfman will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act and Regulations.

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

36. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), Defendant Gelfman is permanently restrained, enjoined and prohibited from, 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, intentionally or recklessly: (1) using or employing, or attempting to use or employ, any manipulative device, scheme, or artifice to defraud; (2) making, or attempting to make, any untrue or misleading statement of a material fact or to omit to state a material fact

necessary in order to make the statements made not untrue or misleading; and (3) engaging, or attempting to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person; in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1)(a) (2012), and/or Commission Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2017);

37. Defendant Gelfman is also permanently restrained, enjoined and prohibited from, directly or indirectly:

- (a) 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);
- (b) Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 83 Fed. Reg. 7979 (Feb. 23, 2018) (to be codified at 17 C.F.R. pt. 1), for his own personal account or for any account in which they have a direct or indirect interest;
- (c) Having any commodity interests traded on his behalf;
- (d) Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests and/or the virtual currency Bitcoin;
- (e) Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests and/or the virtual currency Bitcoin;
- (f) Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except

as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2017);
and

- (g) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2017)), 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, exempted from registration, or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9).

V. RESTITUTION AND CIVIL MONETARY PENALTY

A. Restitution

38. Gelfman shall pay restitution in the amount of four hundred ninety-two thousand sixty-four dollars and fifty-three cents (\$492,064.53) (“Restitution Obligation”), plus post-judgment interest, within thirty (30) days of the date of the entry of this Consent Order. If the Restitution Obligation is not paid in full within thirty (30) days of the date of entry of this Consent Order, then post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2012).

39. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendant’s customers, the Court appoints the National Futures Association (“NFA”) as Monitor (“Monitor”). The Monitor shall receive restitution payments from Gelfman and make distributions as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA’s appointment as Monitor, other than actions involving fraud.

40. Gelfman shall make Restitution Obligation payments under this Consent Order to the Monitor in the name “Gelfman—Settlement/Restitution Fund” and shall send such Restitution Obligation payments by electronic funds transfer, or by 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 cover letter that identifies the paying Gelfman and the name and docket number of this proceeding. Gelfman 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.

41. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defendant’s customers identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a distribution to eligible customers 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 following the instructions for civil monetary penalty payments set forth in Part V.B below.

42. Gelfman shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendant’s customers to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Gelfman shall execute any documents necessary to

release funds that he in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

43. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' customers during the previous year. The Monitor shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

44. The amounts payable to each customer shall not limit the ability of any customer from proving that a greater amount is owed from Gelfman or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under state or common law.

45. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of Defendants who suffered a loss (excluding GBI principals and officers) is explicitly made an intended third-party beneficiary of this Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the restitution that has not been paid by Gelfman to ensure continued compliance with any provision of this Consent Order and to hold Gelfman in contempt for any violations of any provision of this Consent Order.

46. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Gelfman's Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

B. Civil Monetary Penalty

47. Gelfman shall pay a civil monetary penalty in the amount of one hundred seventy-seven thousand five hundred one dollars (\$177,501) ("CMP Obligation"), plus post-judgment interest, within thirty days (30) of the date of the entry of this Consent Order. If the CMP

Obligation is not paid in full within thirty (30) days of the date of entry of this Consent Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2012).

48. Gelfman shall pay the CMP Obligation, plus 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.
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, Gelfman shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Gelfman shall accompany payment of the CMP Obligation with a cover letter that identifies Gelfman and the name and docket number of this proceeding. Gelfman 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.

C. Provisions Related to Monetary Sanctions

49. *Partial satisfaction:* Acceptance by the Commission or the Monitor of any partial payment of Gelfman's Restitution Obligation or CMP Obligation shall not be deemed a waiver

of Gelfman's obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

D. Cooperation

50. Gelfman 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. Gelfman shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action.

VI. MISCELLANEOUS PROVISIONS

51. *Notice:* All notices required to be given by any provision in this Consent Order shall be sent as follows:

Notice to Commission:

Manal M. Sultan, Deputy Director
Division of Enforcement
Commodity Futures Trading Commission
140 Broadway, 19th Floor
New York, NY 10005

Notice to Defendant Gelfman:

Nicholas Gelfman
1612 Kings Highway #17
Brooklyn, NY 11229
nge6426@gmail.com

All such notices to the Commission shall be sent certified mail, return receipt requested, and reference the name and docket number of this action.

52. *Change of Address/Phone:* Until such time as Gelfman satisfies in full his Restitution Obligation and CMP Obligation as set forth in this Consent Order, Gelfman shall provide written notice to the Commission by certified mail of any change within ten (10) calendar days of the change.

53. *Entire Agreement and Amendments:* This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

54. *Invalidation:* If any provision of this Consent Order or if the application of any provision or circumstance is held invalid, then the remainder of this Consent Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

55. *Waiver:* The failure of any party to this Consent Order or of any customer at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or customer at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

56. *Waiver of Service, and Acknowledgement:* Gelfman waives service of this Consent Order and agrees that entry of this Consent Order by the Court and filing with the Clerk of the Court will constitute notice to Gelfman of its terms and conditions. Gelfman further agrees to provide counsel for the Commission, within thirty (30) days after this Consent Order is filed with the Clerk of Court, with an affidavit or declaration stating that Defendant has received and read a copy of this Consent Order.

57. *Continuing Jurisdiction of this Court:* This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all other purposes related to this

action, including any motion by Gelfman to modify or for relief from the terms of this Consent Order.

58. *Injunctive and Equitable Relief Provisions:* The injunctive and equitable relief provisions of this Consent Order shall be binding upon Gelfman, upon any person under his authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Gelfman.

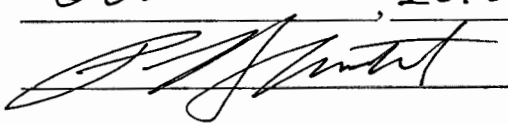
59. *Counterparts and Facsimile Execution:* This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

60. *Contempt:* Gelfman understands that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings he may not challenge the validity of this Consent Order.

61. *Agreements and Undertakings:* Gelfman shall comply with all of the undertakings and agreements set forth in this Consent Order.


* * *

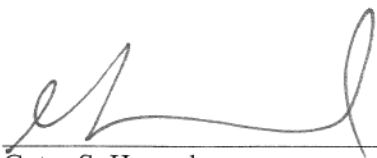
There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this
Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief
Against Defendant Nicholas Gelfman forthwith and without further notice.

IT IS SO ORDERED on this 1st day of October, 2018.

UNITED STATES DISTRICT JUDGE

* * *

CONSENTED TO AND APPROVED BY:



Defendant Nicholas Gelfman

Gates S. Hurand
Senior Trial Attorney
Commodity Futures Trading Commission
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Date: 6/12/18

Date: 10/01/2018

Exhibit A

1 CRIMINAL COURT OF THE CITY OF NEW YORK
2 COUNTY OF NEW YORK: PART F

3 -----x
4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against-

Docket No.

2017NY049091

6 NICHOLAS GELFMAN,

7 Defendant.

8 -----x

9 100 Centre Street
10 New York, New York 10013

11 March 22, 2018

12 B E F O R E:

13 THE HONORABLE ANN MARIE THOMPSON,
14 CRIMINAL COURT JUDGE

15 A P P E A R A N C E S:

16 OFFICE OF CYRUS R. VANCE, JR., ESQ.
17 District Attorney, New York County
18 One Hogan Place
19 New York, New York 10013
20 BY: JEREMY GLICKMAN, ESQ.
21 Assistant District Attorney

22 LAW OFFICE OF ALEX GROSSHTERN
23 Attorneys for the Defendant
24 225 Broadway
25 New York, New York 10007
BY: ALEX GROSSHTERN, ESQ.

LORRAINE BUCALO,
Official Court Reporter

- Proceedings -

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1 COURT OFFICER: Number one from the 2-F calendar,
2 Nicholas Gelfman.

3 MR. GROSSHTERN: Good morning, your Honor, Alex
4 Grosshtern, 225 Broadway, New York, New York for Nicholas
5 Gelfman.

6 THE DEFENDANT: Good morning.

7 THE COURT: Good morning.

8 MR. GLICKMAN: For the People, Jeremy Glickman.
9 Good morning, your Honor.

10 THE COURT: Good morning.

11 MR. GLICKMAN: Judge, the case was on today, as
12 calendared. We have a disposition.

13 THE COURT: Okay.

14 MR. GLICKMAN: I am asking if after the plea, if I
15 could just inquire as part of the factual allocution.

16 THE COURT: Absolutely. Counsel, let me give you a
17 second. We have your notice of appearance. Were you at
18 arraignment?

19 MR. GROSSHTERN: Yes, at arraignment a colleague of
20 mine stood in but it was in my name, so it should be.

21 THE COURT: Yes, I got it. Thank you.

22 MR. GLICKMAN: In this case, the People are
23 offering petit larceny, Penal Law 155.25, as a lesser
24 included count of count one with a waiver of appeal and
25 forfeiture of a flame thrower, which was seized during a

1 search warrant. That would be with a conditional discharge.

2 THE COURT: And you want to make a specific factual
3 allocution?

4 MR. GLICKMAN: Yes, Judge, in connection with the
5 defendant's plea, I have inquiries to make.

6 THE COURT: Do you waive prosecution by information
7 and formal allocution?

8 MR. GROSSHTERN: Yes, your Honor.

9 THE COURT: And adjournment for sentencing?

10 MR. GROSSHTERN: Yes, Judge.

11 THE COURT: And has he executed the waiver of
12 appeal?

13 MR. GLICKMAN: He hasn't, Judge. I would actually
14 ask we adjourn for sentencing for a short period of time,
15 whatever is convenient to the Court and counsel and the
16 defendant, of course.

17 THE COURT: You are moving to reduce count one to
18 petit larceny and dismiss count two for the purposes of
19 disposition and plea?

20 MR. GLICKMAN: Yes, Judge.

21 THE COURT: Counsel, I think I may have said this
22 already, but do you waive prosecution by information and
23 formal allocution?

24 MR. GROSSHTERN: Yes, your Honor.

25 THE COURT: Sir, it is my understanding you wish

1 to plead guilty to Penal Law 155.25, petit larceny, a class
2 A misdemeanor, it will give you or add to a criminal record,
3 with the understanding that the promised sentence, once you
4 come back for sentencing, will be you sign and execute a
5 waiver of appeal that you will, at that point, have gone
6 over with your attorney and sign it knowingly and
7 voluntarily and also that you forfeit a flame thrower and
8 you will be sentenced to a conditional discharge, which
9 means that you will lead a law abiding life with no new
10 arrests for one year. Is that what your understanding of
11 what the promise is?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And is that what you wish to do?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Have you had enough time to speak to
16 your attorney?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And are you pleading guilty of your own
19 free will?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: In this case you would have the right
22 to a trial, you would have the right to call witnesses on
23 your own behalf, you would have had a right to testify or to
24 remain silent and have the District Attorney prove their
25 case against you. In addition, you would have had the right

1 to have your attorney question the District Attorney's
2 witnesses. By pleading guilty in this case, you are giving
3 up those rights. Is that what you wish to do?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: If you are not a United States citizen,
6 a plea of guilty in this case could have negative
7 immigration consequences including deportation, removal and
8 denial of United States citizenship. Knowing this, do you
9 still wish to plead guilty?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you want to do the entire
12 allocution?

13 MR. GLICKMAN: I think I would be able to cover it,
14 Judge.

15 THE COURT: Perfect.

16 MR. GLICKMAN: Thank you. Mr. Gelfman, please
17 listen and answer the following. Is it true that during the
18 period from on or about July of 2015 through October of
19 2015, you claimed to have created and used a proprietary
20 algorithm, also known as a bot, for trading a Bitcoin. Is
21 that true?

22 THE DEFENDANT: Yes.

23 MR. GLICKMAN: And is it also true that you and
24 some business partners were present in New York County when
25 one of the business partners successfully made a pitch to

1 the investor and obtained money under fraudulent pretenses;
2 specifically, that the investor's money would be traded by a
3 fully automated algorithm when you knew and were aware that
4 those representations made by the partner were false and
5 that such trading would not all be automatic but rather
6 would include manual trading based on your own trading
7 decisions?

8 THE DEFENDANT: Yes, sir.

9 MR. GLICKMAN: And were you also aware during this
10 period that the proprietary algorithm or bot could not be
11 used when the Bitcoin market was erratic?

12 THE DEFENDANT: Yes, sir.

13 MR. GLICKMAN: Is it also true that during this
14 period of time, you made manual adjustments to the trading
15 algorithm and conducted certain trades with the -- sorry,
16 with certain trades in the account using the investor funds?

17 THE DEFENDANT: Yes, sir.

18 MR. GLICKMAN: And finally, is it also true you
19 made false representations to certain business partners and
20 at least one investor about the amount of funds which were
21 in certain accounts used for investor trading activity?

22 THE DEFENDANT: Yes, sir.

23 MR. GLICKMAN: Unless the Court has any questions,
24 that is satisfactory to the People. Sorry, and indeed that
25 did cause a loss to at least one of the investors?

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1 THE DEFENDANT: Yes.

2 MR. GLICKMAN: That's it, Judge. Thank you.

3 THE COURT: Okay. So I am not sentencing you
4 today. You are going to come back to Part C for sentencing.
5 Counsel, have you agreed upon a date and time period?

6 MR. GROSSHTERN: Judge, perhaps the week of the
7 16th, are there any good days?

8 THE COURT: Of April?

9 MR. GROSSHTERN: Yes, April.

10 THE COURT: How is April 20th?

11 MR. GROSSHTERN: Can I ask for the 19th, is that
12 possible?

13 THE COURT: Yes.

14 MR. GROSSHTERN: Thank you.

15 THE COURT: Part C, April 19th. Supervised
16 rerelease is discontinued.

17

18 *****

19 Certified to be a true and accurate record of the
20 within proceedings.

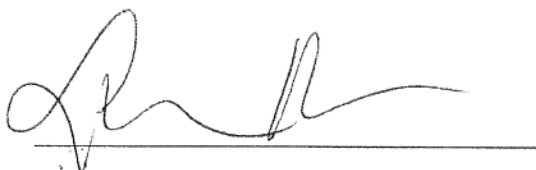
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A handwritten signature in black ink, appearing to read 'Lorraine Bucalo', is written over a horizontal line.

LORRAINE BUCALO
Official Court Reporter