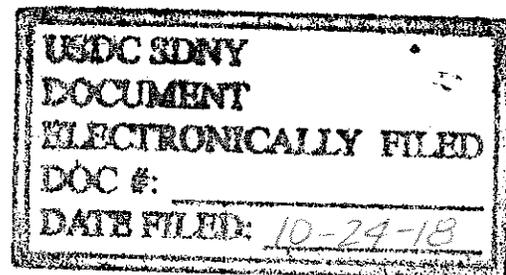


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

ALGOINTERACTIVE INC, KEVIN P. WHYLIE,
and MATTHEW JAMES ZECCHINI,

Defendants.

Case No. 18-CV-3177-LAP-KNF

**CONSENT ORDER FOR PERMANENT INJUNCTION,
CIVIL MONETARY PENALTY AND OTHER EQUITABLE
RELIEF AGAINST DEFENDANT KEVIN P. WHYLIE**

I. INTRODUCTION

On April 11, 2018, Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint against Defendants Algointeractive Inc (“Algointeractive”), Kevin P. Whylie (“Whylie”), and Matthew James Zecchini (“Zecchini”) (together, “Defendants”), seeking injunctive and other equitable relief, as well as the imposition of civil monetary penalties, for violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1-26 (2012), and the Commission’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. pt. 1-190 (2017).

II. CONSENTS AND AGREEMENTS

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

1. Consents to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendant Kevin P. Whyllie (“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 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 Regulations, 17 C.F.R. §§ 148.1 *et seq.* (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, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), 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 Defendant Whylie 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. Defendant Whylie 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. Consents to the entry of this Consent Order without admitting or denying the allegations of the Complaint or any findings or conclusions in this Consent Order, except as to jurisdiction and venue, which he admits;

12. Consents to the use of the findings and conclusions in this Consent 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;

13. Does not consent, however, to the use of this Consent Order, or the findings and conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party, other than a statutory disqualification proceeding; proceeding in bankruptcy, or receivership; or proceeding to enforce the terms of this Order;

14. Agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 105 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

15. 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 Defendant Whylic 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.

THE PARTIES AGREE AND THE COURT HEREBY FINDS:

A. Findings of Fact

The Parties To This Consent Order

16. Plaintiff **Commodity Futures Trading Commission** (“Commission”) is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act and Regulations.

17. Defendant **Kevin P. Whylie** (“Wylie”) is a co-founder of Algointeractive, a New York corporation. Whylie held himself out as Algointeractive’s Treasurer, Chief Operating Officer, Chief Financial Officer, and head of the firm’s trade desk. From approximately April 2016 through at least April 11, 2018 (the “Relevant Period”), Whylie, in his role as principal, director, and officer of Algointeractive, was engaged in a fraudulent scheme to solicit at least \$300,000 from at least four members of the public to participate in a pooled investment vehicle for futures trading. In furtherance of the scheme, Whylie made material misstatements and omissions in solicitations to pool participants and prospective pool participants (hereinafter referred to collectively as “participants”), including misrepresenting Defendants’ background, experience, track record, and amount of assets under management, and misrepresenting that all or substantially all of the participants’ funds would be pooled and invested in, among other things, futures contracts, for the participants’ benefit. Whylie is a resident of Ozone Park, New York. Whylie has never been registered with the Commission in any capacity.

Wylie’s Purported “Algorithmic Hedge Fund”

18. In 2015, Whylie co-founded an investment firm, which was incorporated on or about November 4, 2015, under the name “Algointeractive Inc [sic].” At the time, Whylie was self-employed at Joe and Sons Enterprise, his family’s moving and logistics business in Mamaroneck, New York.

19. Algointeractive developed an algorithm for trading futures contracts. In late 2015, Whylic and his partners unsuccessfully sought funding for Algointeractive by entering an entrepreneurship competition, in which they described Algointeractive as offering algorithmic trading services—specifically, a “scheduled event based trading platform”—to retail investors.

20. Although Algointeractive sometimes represented that it was also investing in the “technology sector” as well as in pharmaceutical company securities (based on a purported expertise in evaluating “the probability of success for clinical trials throughout the world”), Algointeractive primarily held itself out to the public in promotional materials as an “algorithmic hedge fund” whose “Core Product” was its algorithm for trading futures contracts. Algointeractive stated alternately that “all funds are invested in exchange listed commodities” or that the firm was focused “almost entirely in the commodities space.”

21. During the Relevant Period, at least four participants invested, in total, \$300,000 in Algointeractive’s purported hedge fund. The first participant to provide funds to Algointeractive (“Investor 1”) invested a total of \$50,000 between April 2016 and June 2016; the second participant (“Investor 2”) invested a total of \$100,000 between July 2016 and September 2016; the third participant (“Investor 3”) invested a total of \$100,000 between February 2017 and April 2017; and the fourth participant (“Investor 4”) invested \$50,000 in May 2017. Participant funds were not held, or traded, in separate participant accounts, but rather were pooled together.

22. Participants each invested with Algointeractive pursuant to written agreements by which Algointeractive promised to pay a fixed monthly return on each participant’s principal investment, for a defined period of time, with Algointeractive retaining any excess returns. Under the agreements, participants could elect either to receive monthly dividends or to

compound their returns by reinvesting the dividends with Algointeractive. For some participants, the promised monthly rate of return was as high as five percent—i.e., nearly an eighty percent annual return on the participant’s principal if he or she chose to reinvest monthly dividends with Algointeractive.

Whylic’s Fraudulent Solicitation and Misappropriation of Participant Funds

23. During the Relevant Period, Algointeractive, by and through its officers, employees, or agents, including Whylic, fraudulently solicited participants to invest in a commodity pool for futures trading, issued false account statements and other false and misleading materials to participants, and misappropriated participants’ funds. In furtherance of this fraudulent scheme, Algointeractive made misrepresentations and omissions to pool participants in written solicitations and correspondence sent via email as well as orally.

24. Algointeractive’s fraudulent solicitations included misrepresentations by Whylic and other officers, employees, or agents that all or substantially all of participants’ funds would be pooled and used to invest in, among other things, futures trading to generate returns for participants. For example, the cover page of one written solicitation provided to pool participants in or around March 2016 stated, in full: “Algointeractive Investments: Where your money is money being invested.” Such representations were false and misleading because, as described further below, Algointeractive and its officers, employees, or agents, including Whylic, did not use, and had no intention to use, all or substantially all of participants’ funds to trade commodity futures for the benefit of participants, as promised, but rather began misappropriating the majority of participants’ funds for unauthorized personal and business expenses almost as soon as the investments were received.

25. Algointeractive also misled participants about the background and experience of Algointeractive's principals. For instance, a "Due Diligence Questionnaire" provided to pool participants, dated November 17, 2015, misleadingly stated that Zecchini had eight years' experience in medical, mathematical, statistical, and trading related work, and that Whylie had ten years' experience in equity, currency, commodity, and fixed income trading. Separately, Algointeractive told participants that Zecchini had developed specialized knowledge about pharmaceutical and biotechnology while attending medical school, and Whylie told participants that he was once a licensed securities broker. In fact, Zecchini and Whylie were both college dropouts who had no professional experience in finance or algorithmic trading. Zecchini worked as a pharmacy technician at Good Samaritan Hospital in West Islip, New York, and Whylie was self-employed at his family's moving business.

26. The due diligence questionnaire falsely stated that Algointeractive's principals and/or management had invested a total of at least \$500,000 in the company (or other investment vehicles managed *pari passu* with the company). In reality, the firm's three co-founding principals had invested no more than \$15,000 total in the company.

27. The due diligence questionnaire also falsely stated that "[t]otal assets managed/advised by" Algointeractive exceeded \$500,000, with a largest current account of more than \$150,000. In fact, as of November 17, 2015, Algointeractive had not even opened a corporate bank account, and had no assets under management, and at no time did Algointeractive ever have any single customer with an interest in its commodity pool worth more than \$150,000.

28. A later version of the questionnaire, dated November 11, 2016, falsely stated that Algointeractive had total assets under management of at least \$1.5 million and more than \$350,000 in the largest account. In reality, Algointeractive never had more than approximately

\$300,000 total assets under management and never had a pool participant invest more than \$100,000. (Moreover, Algointeractive had represented to NFA on June 30, 2016, that pursuant to Regulation 4.13(a)(2)(ii), 17 C.F.R. § 4.13(a)(2)(ii) (2017), all commodity pools operated by Algointeractive would not have gross capital contributions in excess of \$400,000 total.)

29. Algointeractive provided participants with a “Confidential Information Memorandum,” dated August 2016, that was replete with misrepresentations. The memorandum stated that Algointeractive’s algorithm for trading futures was achieving profits on seventy percent of trades and thus generating “consistent returns.” The memorandum claimed: “We achieve unparalleled returns: 5% per month to investors through our inaugural strategy, for twelve straight months.” The memorandum also claimed: “We already have 6 individual investors, who we’ve made collectively over \$250,000 since October 2015.”

30. All of these statements were false. As of August 2016, only two participants had invested in Algointeractive, not six; the firm’s trading had not generated any positive returns for its participants, let alone \$250,000; there was no month in which Algointeractive’s trading had achieved profits of five percent; and trades made using Algointeractive’s algorithm were profitable only about half the time.

31. The Confidential Information Memorandum also prominently advertised “Key Metrics” from Algointeractive’s supposedly successful trading in an “Oct. 2014-2015 Backtest,” including 49.8% “Total Returns,” but lacked any disclaimer explaining that the memorandum was purporting to describe only simulated or hypothetical performance results that did not represent actual trading, or explaining the inherent limitations of such performance information.

32. Algointeractive, by and through its officers, employees, or agents, including Whyllie, also provided participants with fictitious monthly charts, dated from at least November

2016 through May 2017, titled “Algointeractive’s Operating Expenses,” purporting to show Algointeractive’s profitability. The charts stated that Algointeractive had a “Starting Account” balance of over \$452,000 in November 2016, and a “Net Account” balance that increased each month, reaching over \$704,000 after the payment of May 2017 expenses; that Algointeractive achieved “Account Profits” of greater than \$27,000 each month from November 2016 through May 2017, for a total of over \$250,000 “Account Profits”; and that Algointeractive allocated at least \$12,000 to “Investor Returns” in each of those months. All of the figures in these charts were fabricated for the purpose of defrauding participants. As noted above, Algointeractive never had assets approaching \$700,000, and never achieved profits approaching tens of thousands of dollars in a single month.

33. In fact, Algointeractive never achieved any trading profits for pool participants.

34. On April 7, 2016, Algointeractive deposited \$5,000 of pool participant funds in a margin account with an online stock broker that its principals, including Whyllie, had opened in Algointeractive’s name. In just a few weeks, trading stock and ETF options, Algointeractive had lost all but approximately \$20, and never traded again in the account after May 2016.

35. Algointeractive also had one trading account with a futures commission merchant (“FCM 1”) (the “Futures Trading Account”), which was active only from June 2016 through November 2016. Algointeractive deposited \$55,000 total of pool participant funds in the Futures Trading Account, and used those funds to trade stock options and futures, including crude oil futures and natural gas futures trading on NYMEX. On balance, the Futures Trading Account was unprofitable, with total losses of approximately \$2,000.

36. Any further trading in futures or options that Algointeractive may have done with pool participant funds was carried out with funds that Algointeractive had misappropriated and

deposited into personal trading accounts held in the name and for the benefit of one of Algointeractive's principals, including Whyllie, without the knowledge or consent of participants.

37. Participant funds were deposited in at least one futures trading account in the name of one of Algointeractive's principals at another futures commission merchant besides FCM 1 ("FCM 2"). That account engaged in trading between approximately October 2016 and August 2017, trading CME, NYMEX, CBOT, COMEX, and ICE futures contracts including Treasury bond, stock index, foreign currency, corn, soybean, gold, crude oil, and natural gas futures, and suffering over \$62,000 in trading losses.

38. Whyllie deposited participant funds in at least one futures trading account in his own name, also with FCM 2, and engaged in trading in that account between approximately April 2016 and October 2016, trading CME, NYMEX, and CBOT futures contracts including stock index, foreign currency, corn, crude oil, and natural gas futures, and suffering over \$1,000 in trading losses.

39. Most of the \$300,000 that participants invested with Algointeractive was misappropriated, with over \$200,000 total going to personal bank accounts in the name of Algointeractive's principals, including Whyllie, and thousands of dollars more being misappropriated through the depletion of Algointeractive's bank accounts to pay unauthorized business and personal expenses, including the use of participants' principal to make dividend payments to other participants, in the manner of a Ponzi scheme.

40. For instance, just one day after \$50,000 from Investor 3 was deposited into a nearly empty Algointeractive bank account, Algointeractive used that same account to wire a \$2,000 purported dividend payment to Investor 2.

41. Whylie used Algointeractive's bank accounts to pay for unauthorized personal expenses including clothing and high-end restaurant and hotel bills.

42. Whylie also ran up thousands of dollars of credit card bills for Algointeractive, largely on personal expenses such as meals and transportation. In or around May 2016, Whylie repeatedly attempted to misappropriate pool participant funds in Algointeractive's bank account to pay down these credit card bills, but the payments were declined for insufficient funds.

43. Instead of using all or substantially all of participants' funds to trade, among other things, futures contracts, as promised, during the Relevant Period, Algointeractive misappropriated the majority of participants' funds for unauthorized purposes. Through his control over Algointeractive's bank and trading accounts, Whylie personally misappropriated pool participants' funds for unauthorized personal or business expenses. Algointeractive and Whylie failed to disclose to participants that they were not trading with all or substantially all participant funds, as was promised, and failed to disclose to participants that Algointeractive was in fact misappropriating participant funds for unauthorized business and personal expenses of its principals, including Whylie.

44. Whylie knew, or acted with reckless disregard of the fact, that pool funds were being misappropriated and not being traded for the benefit of participants because he controlled Algointeractive's and his own personal bank and trading accounts and engaged in the misappropriation himself.

45. To date, of the \$300,000 that participants invested with Algointeractive, only \$59,450 has been returned to the participants; participants have lost a total of \$240,550.

Whylie's Misrepresentations and Omissions to Cover Up and Perpetuate the Fraud

46. During the Relevant Period, in order to cover up and perpetuate their fraud, Algointeractive, by and through its officers, employees, or agents, including Whylie, willfully made, or caused to be made, false account statements and other documents that inflated and misrepresented the value of participants' accounts and Algointeractive's trading returns.

47. Algointeractive did not disclose to participants that it suffered trading losses or that most of participants' funds invested with Algointeractive were actually misappropriated rather than being used to trade for the benefit of participants.

48. By making and issuing such account statements and other documents, Algointeractive and Whylie either willfully misrepresented or attempted to misrepresent material information to pool participants, or willfully deceived or attempted to deceive pool participants, on multiple occasions during the Relevant Period.

49. Algointeractive provided participants with falsified account statements purporting to show that funds were being allocated to individual participants within a trading account held at FCM 2 in the name of Algointeractive, and that individual participants' investments were performing profitably. For instance, Algointeractive gave Investor 1 a document, dated December 31, 2016, purporting to be a monthly statement generated by FCM 2. The document stated that within an "Algointeractive Investments" account at FCM 2, Investor 1's December 2016 beginning balance was \$65,827.60, that his account was credited \$3,291.38 for "this month's activity," and that his ending balance was \$69,118.98. However, there was never an account opened in the name of Algointeractive or "Algointeractive Investments" at FCM 2 (Algointeractive had applied for such an account but it was never opened); there was no Algointeractive account at any futures commission merchant that generated trading profits

during the month of December 2016; and Algointeractive never created customer subaccounts in the names of any of its pool participants in any of the firm's trading or bank accounts. The fictitious statement and others like it for Investor 1 and other participants had actually been created by Whylie, who doctored personal account statements he had received from FCM 2.

50. Algointeractive and Whylie told many other lies to pool participants in furtherance of the fraudulent scheme. For example, when Investor 2 asked for the return of a portion of her funds in late 2016 or early 2017, pursuant to her three-month investment agreement with Algointeractive dated September 1, 2016, Algointeractive concocted an elaborate hoax to avoid repaying her.

51. Initially, in early 2017, Algointeractive told Investor 2 that the return of her funds was being delayed due to anti-money-laundering policies newly implemented by NFA, claiming that Algointeractive's officers, employees, or agents were writing letters to NFA and were scheduled to meet with NFA to resolve the issue. Algointeractive later told Investor 2 that, at a second meeting with NFA, NFA had stated that Investor 2 was not an "accredited investor," that she had failed to pay taxes on interest she had received, and that it was a "violation" for her to have entered into a three-month investment contract in addition to one-year agreements she had previously made with Algointeractive. None of this was true.

52. Next, Algointeractive thereafter falsely told Investor 2 that her funds had been frozen because Algointeractive had to pay a fine to NFA. After Investor 2 requested documentation of the fine, on March 9, 2017 Whylie sent Investor 2 a two-page document that Whylie represented to Investor 2 was a letter from NFA, but in reality was a forgery. The undated letter contained the subject line "Request for Information Regarding Algo interactive

(CTA)KEVIN P WHYLIE [sic],” but no salutation, and ended with the signature of an individual who was actually an executive of CME Group, not NFA.

53. Algointeractive’s officers, employees, or agents, including Whylie, later met with Investor 2 at Algointeractive’s office, where they repeated to her the false story that NFA had frozen her assets.

54. Finally, Whylie falsely told Investor 2 that he had arranged for a meeting at NFA’s New York office on July 26, 2017, in order to address the issue. When Investor 2 arrived in the lobby of NFA’s New York office at the appointed time, no one at NFA was aware of a meeting with Whylie having been scheduled, nor did Whylie know the name of the NFA staff member with whom he had supposedly arranged to meet.

Commingling of Funds and Failure to Register

55. Algointeractive, by and through its officers, employees, or agents, including Whylie, while operating Algointeractive as a commodity pool operator (“CPO”), failed to operate their commodity pool as a legal entity separate from Algointeractive, received pool funds in the wrong name (i.e., in the name of Algointeractive), commingled pool funds with non-pool property, and failed to register with the Commission.

56. During the Relevant Period, Algointeractive, by and through its officers, employees, or agents, including Whylie, used the mails, emails, wire transfers, websites, and other means or instrumentalities of interstate commerce, to solicit participants.

57. Algointeractive was never registered as a CPO. During the Relevant Period, Algointeractive acted as a CPO by engaging in a business that is of the nature of a commodity pool and, in connection with that business, soliciting, receiving, or accepting pool funds from participants for the purpose of trading in commodity interests.

58. During the Relevant Period, prior to approximately June 30, 2016, and again after March 1, 2017, Algointeractive acted as a CPO without registering as a CPO or claiming exemption from registration. Algointeractive provided subscription agreements to pool participants both prior to June 30, 2016 and after March 1, 2017.

59. On or about June 30, 2016, Whylic filed for Algointeractive a notice with NFA claiming that Algointeractive was exempt from registration as a CPO. The notice represented that Algointeractive was a CPO operating one exempt commodity pool, and that the name of the pool was "Matthew Zecchini."

60. On or about July 7, 2016, FCM 1 informed Algointeractive by email that because a CPO is required to operate a pool as an entity separate from the CPO, and because Algointeractive's Futures Trading Account was in the name of Algointeractive, it was therefore improper for Whylic to have identified Algointeractive to NFA as a CPO claiming to be exempt from registration. FCM 1 suggested that the notice of exemption should be withdrawn and a new notice should be filed identifying Zecchini as a CPO and Algointeractive as his pool.

61. Algointeractive did not take any action to correct the notice of exemption. Instead, Algointeractive's officers, employees, or agents, including Whylic, continued to solicit and accept participant funds to be deposited in accounts in the name of the entity claiming to be an exempt CPO, i.e., Algointeractive.

62. Algointeractive did not affirm its notices of exemption within 60 days of the end of the year 2016, which caused the claimed exemptions to be deemed withdrawn by NFA, effective March 2, 2017.

63. Prior to delivering subscription agreements to participants during the Relevant Period, Algointeractive's officers, employees, or agents did not deliver to participants any

written statement that Algointeractive was exempt from registration as a CPO and therefore need not provide a disclosure document or certified annual report; nor did Algointeractive's officers, employees, or agents provide to participants any description of criteria pursuant to which Algointeractive qualified for exemption from registration.

64. As a result, Algointeractive was not eligible for the CPO registration exemption for which Whylie filed a notice of exemption, and Algointeractive was required to register as a CPO notwithstanding the notice of exemption filed with NFA.

65. Whylie acted as an associated person ("AP") of a CPO by, in his capacity as partner, officer, employee, consultant, or agent of the CPO (Algointeractive), soliciting or supervising the solicitation of funds for participation in Algointeractive's pool, but he never registered with the Commission as such.

66. The misappropriation of pool participants' funds, as detailed above, by Algointeractive and its officers, including Whylie, involved the commingling of pool property with their own property. Whylie and other Algointeractive officers deposited their own funds in the Algointeractive bank accounts that were used to hold pool participant funds, and Whylie used those bank accounts to pay his own personal expenses. Algointeractive, by and through its officers, employees, or agents, also transferred money from Algointeractive's bank accounts into existing personal bank accounts of Algointeractive's officers, including Whylie's personal bank account, again mixing pool property with their own property.

Controlling Person Liability

67. Throughout the Relevant Period, Whylie was chief financial officer and a principal and director of Algointeractive.

68. Throughout the Relevant Period, Whylie, in his capacity as an officer, principal, and director of Algointeractive, directed and controlled all solicitations of participants. Although others took part in preparing materials used for solicitations and in communicating with participants, in all cases Algointeractive's principals, including Whylie, supervised these individuals and dictated the content of the materials and substance of the representations about Algointeractive that were made to the participants.

69. During the Relevant Period, Whylie was an authorized signer on, and therefore had access to and control over, Algointeractive's bank accounts, and also was an authorized trader with control over the Futures Trading Account and Algointeractive's online stock brokerage account.

70. During the Relevant Period, Whylie did not act in good faith or knowingly induced Algointeractive and its officers, employees, or agents' violations of the Act and Regulations, by personally making or directing others to make the misrepresentations and omissions described above to participants, misappropriating or causing Algointeractive to misappropriate participants' funds, and operating or causing Algointeractive to commingle participants' funds and operate Algointeractive without proper registration.

71. Whylie knew or recklessly disregarded the fact that Algointeractive and its officers, employees, or agents were making fraudulent solicitations and misrepresentations to participants, that participants were being given false account statements, that pool participant funds were being misappropriated, that participants' funds were being commingled, and that Algointeractive was being operated without proper registration. Whylie failed to remove or correct the misrepresentations and other violations of the Act and Regulations, and failed to disclose the misappropriation of pool participant funds.

B. Conclusions of Law

Jurisdiction and Venue

72. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), which provides that whenever it shall appear to the Commission that any person has engaged, is engaging, 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 promulgated thereunder, the Commission may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder. This Court also has jurisdiction pursuant to 28 U.S.C. § 1331 (2012) (federal question) and 28 U.S.C. § 1345 (2012) (United States as plaintiff).

73. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because the acts and practices in violation of the Act occurred within this District.

Fraud in Connection with Futures Contracts

74. By the conduct described in paragraphs 16 through 71 above, Algointeractive and Whylic violated Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C) (2012), by willfully or recklessly making false representations and omissions or otherwise defrauding participants, including but not limited to by: (1) misrepresenting to participants that all or substantially all of participants' funds would be pooled and used to invest in, among other things, futures contracts for the benefit of participants; (2) misrepresenting to participants Defendants' background, experience, and track record, the number of participants in Algointeractive's pool, and the amount of assets under management by Algointeractive; (3) sending participants false account statements and other documents that inflated and misrepresented the value of their accounts and the pool's trading returns; (4) misrepresenting to one participant that her funds

were unavailable for withdrawal due to actions taken by NFA or government authorities; and (5) misappropriating participants' funds for unauthorized personal or business expenses rather than investing for the benefit of participants, and failing to disclose that participants' funds had been misappropriated.

75. Whylie held and exercised direct and indirect control over Algointeractive and either did not act in good faith or knowingly induced Algointeractive's violations of 7 U.S.C. § 6b(a)(1)(A)-(C). As a controlling person of Algointeractive, Whylie is liable for Algointeractive's violations of 7 U.S.C. § 6b(a)(1)(A)-(C), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).

Fraud and Deceit by a CPO and by an AP of a CPO

76. By the conduct described in paragraphs 16 through 71 above, Algointeractive, while acting in its capacity as a CPO, and Whylie, while acting in his capacity as an AP of Algointeractive, violated Section 4o(1)(A)-(B) of the Act, 7 U.S.C. § 6o(1)(A)-(B) (2012), by willfully or recklessly making false representations and omissions or otherwise defrauding participants or engaging in conduct that operated as a fraud or deceit on participants, including but not limited to by: (1) misrepresenting to participants that all or substantially all of participants' funds would be pooled and used to invest in, among other things, futures contracts for the benefit of participants; (2) misrepresenting to participants Defendants' background, experience, and track record, the number of participants in Algointeractive's pool, and the amount of assets under management by Algointeractive; (3) sending participants false account statements and other documents that inflated and misrepresented the value of their accounts and the pool's trading returns; (4) misrepresenting to one participant that her funds were unavailable for withdrawal due to actions taken by NFA or government authorities; and (5) misappropriating pool participants' funds for unauthorized personal or business expenses rather than investing for

the benefit of participants, and failing to disclose that participants' funds had been misappropriated.

77. In addition to Whylie's direct violations of 7 U.S.C. § 6o(1)(A)-(B), Whylie held and exercised direct and indirect control over Algointeractive and either did not act in good faith or knowingly induced Algointeractive's violations of 7 U.S.C. § 6o(1)(A)-(B). As a controlling person of Algointeractive, Whylie is liable for Algointeractive's violations of 7 U.S.C. § 6o(1)(A)-(B), pursuant to 7 U.S.C. § 13c(b).

False Advertising and Failure to Include Hypothetical Disclaimer

78. By the conduct described in paragraphs 16 through 71 above, Algointeractive and Whylie violated Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2017), in that, during the Relevant Period, while acting in their capacity as a CPO and as principal of Algointeractive, respectively, they advertised using misrepresentations about, among other things, Defendants' background, experience, and track record, the number of participants in Algointeractive's pool, and the amount of assets under management by Algointeractive, as well as misrepresentations that all or substantially all of participants' funds would be pooled and used to invest for the benefit of participants.

79. During the Relevant Period, Algointeractive and Whylie presented in written advertising statements about simulated or hypothetical commodity interest trading results achieved by Algointeractive that were not accompanied by any statement prescribed in Regulation 4.41(b), 17 C.F.R. § 4.41(b) (2017). Therefore, Algointeractive and Whylie violated 17 C.F.R. § 4.41(b).

80. In addition to Whylie's direct violations of 17 C.F.R. § 4.41(a)-(b), Whylie held and exercised direct and indirect control over Algointeractive and either did not act in good faith

or knowingly induced Algointeractive's violations of 17 C.F.R. § 4.41(a)-(b). As a controlling person of Algointeractive, Whyllie is liable for Algointeractive's violations of Regulation 4.41(a)-(b) pursuant to 7 U.S.C. § 13c(b).

Failure to Register as a CPO and as AP of the CPO

81. By the conduct described in paragraphs 16 through 71 above, Algointeractive acted as an unregistered CPO in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), in that: (1) both prior to filing its notice of claimed exemption on or around June 30, 2016 and after its notice of claimed exemption was withdrawn by NFA on or around March 2, 2017, Algointeractive operated as a CPO by soliciting, accepting, or receiving funds from participants, using the mails or means of interstate commerce (including email) for the purpose of trading commodity futures contracts, and (2) Algointeractive engaged in these activities without having registered with the Commission as a CPO.

82. Despite Algointeractive's claim that it was exempt from CPO registration requirements, at no time during the Relevant Period was Algointeractive eligible for exemption from registration under Regulation 4.13(a)(2), 17 C.F.R. § 4.13(a)(2) (2017), because prior to receiving subscription agreements Algointeractive's participants never received (a) any written statement that Algointeractive was exempt from registration as a CPO and therefore need not provide a disclosure document or certified annual report or (b) any description of criteria pursuant to which Algointeractive qualified for exemption from registration, as required by Regulation 4.13(a)(6)(i)-(ii), 17 C.F.R. § 4.13(a)(6)(i)-(ii) (2017).

83. Likewise, at no time during the Relevant Period was Whyllie eligible, pursuant to Regulation 3.12(h)(3)(ii), 17 C.F.R. § 3.12(h)(3)(ii) (2017), for exemption from the requirement to register as an AP of a CPO.

84. During the Relevant Period, Algointeractive, while using the mails or means of interstate commerce (including email) in connection with its business as a CPO, was not registered with the Commission as a CPO. Thus, Algointeractive acted as an unregistered CPO in violation of 7 U.S.C. § 6m(1).

85. During the Relevant Period, Whylic acted as an AP of Algointeractive without registering with the Commission as an AP of a CPO. Thus, Whylic acted as an unregistered AP of a CPO in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012).

86. Whylic held and exercised direct and indirect control over Algointeractive and either did not act in good faith or knowingly induced Algointeractive's violations of 7 U.S.C. § 6m(1). As a controlling person pursuant to 7 U.S.C. § 13c(b), Whylic is liable for Algointeractive's violations of 7 U.S.C. § 6m(1).

Failure To Operate Pool as Separate Entity; Failure To Receive Pool Participant Funds in Pool's Name; Commingling Pool Funds

87. By the conduct described in paragraphs 16 through 71 above, during the Relevant Period, Algointeractive, while acting as a CPO, violated Regulation 4.20(a)-(c), 17 C.F.R. § 4.20(a)-(c) (2017), by: (1) failing to operate its commodity pool as a legal entity separate from Algointeractive; (2) failing to receive pool participants' funds in the name of a pool that was a legal entity separate from itself; and (3) commingling the property of the pool with property of others.

88. Whylic held and exercised direct and indirect control over Algointeractive and either did not act in good faith or knowingly induced Algointeractive's violations of 17 C.F.R. § 4.20(a)-(c). As a controlling person of Algointeractive, Whylic is liable for Algointeractive's violations of 17 C.F.R. § 4.20(a)-(c), pursuant to 7 U.S.C. § 13c(b).

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

89. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), Defendant Kevin P. Whyllie is permanently restrained, enjoined and prohibited from directly or indirectly:

(a) In or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person, cheating or defrauding or attempting to cheat or defraud the other person; willfully making or causing to be made to the other person any false report or statement or willfully entering or causing to be entered for the other person any false record; or willfully deceiving or attempting to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to an order or contract for or with the other person, in violation of Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C.

§ 6b(a)(1)(A)-(C) (2012);

(b) Associating with a commodity pool operator as a partner, officer, employee, consultant, or agent (or occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged, without registering as an associated person, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2012);

(c) As a commodity trading advisor or commodity pool operator, making use of the mails or any means or instrumentality of interstate commerce in connection with his

business as a commodity trading advisor or commodity pool operator, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012);

(d) As a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly employing any device, scheme, or artifice to defraud any client or participant or prospective client or participant, or engaging 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, in violation of Section 4o(1)(A)-(B) of the Act, 7 U.S.C. § 6o(1)(A)-(B) (2012);

(e) As a commodity pool operator, operating a commodity pool under a legal entity not cognizable as a legal entity separate from the commodity pool operator; receiving funds, securities or other property from an existing or prospective pool participant for the purchase of an interest or as an assessment on an interest in the pool in the name of an entity other than the commodity pool; or comingling the property of any pool that he operates or intends to operate with the property of any another person, in violation of Regulation 4.20(a)-(c), 17 C.F.R. § 4.20(a)-(c);

(f) As a commodity pool operator, commodity trading advisor, or any principal thereof, advertising in a manner which employs any device, scheme or artifice to defraud any participant or client or prospective participant or client, or involves any transaction, practice or course of business which operates as a fraud or deceit upon any participant or client or any prospective participant or client, in violation of Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2017); or

(g) Presenting the performance of any simulated or hypothetical commodity interest account, unless a prescribed statement (stating, among other things, the inherent limitations of hypothetical or simulated performance data) is disclosed prominently and in immediate proximity to the simulated or hypothetical performance information being presented, in violation of Regulation 4.41(b), 17 C.F.R. § 4.41(b) (2017).

90. Defendant Whyllie 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, 17 C.F.R. § 1.3 (2017)) for his own personal account or for any account in which he has 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;

(e) Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;

(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/or

(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 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2017).

V. RESTITUTION AND CIVIL MONETARY PENALTY

A. Restitution

91. Defendant Whylie shall pay restitution in the amount of two hundred forty thousand five hundred fifty dollars (\$240,550) (“Restitution Obligation”), plus post-judgment interest. 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).

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

93. Defendant Whylie shall make Restitution Obligation payments under this Consent Order to the Monitor in the name of “Algointeractive Inc/Kevin P. Whylie/Matthew James Zecchini –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 Defendant and the name and docket number of this proceeding. Defendant Whylic 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 and R. Stephen Painter, Jr., Chief Trial Attorney, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, NY 10005.

94. 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 Algointeractive's pool participants 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 pool participants 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 Section V.B. below.

95. Defendant Whylic shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Algointeractive's pool participants to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Defendant Whylic 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 Restitution Obligation.

96. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Algointeractive's pool participants 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.

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

98. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each pool participant who suffered a loss 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 Defendant Whylic, to ensure continued compliance with any provision of this Consent Order, and to hold Defendant Whylic in contempt for any violations of any provision of this Consent Order.

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

100. Defendant Whylic will obtain a dollar-for-dollar credit against his Restitution Obligation as a result of any restitution payments made in this case by Defendant Algointeractive or Defendant Zecchini.

B. Civil Monetary Penalty

101. Defendant Whylic shall pay a civil monetary penalty in the amount of one hundred thousand dollars (\$100,000) ("CMP Obligation"), plus post-judgment interest. 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).

102. Defendant Whylie shall pay his CMP Obligation 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 by electronic funds transfer is chosen, Defendant Whylie shall contact Marie Thorne or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendant Whylie shall accompany payment of the CMP Obligation with a cover letter that identifies the Defendant and the name and docket number of this proceeding. Defendant Whylie 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, and R. Stephen Painter, Jr., Chief Trial Attorney, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, NY 10005.

C. Provisions Related to Monetary Sanctions

103. Partial Satisfaction: Acceptance by the Commission or the Monitor of any partial payment of Defendant Whylie's Restitution Obligation or CMP Obligation shall not be deemed a

waiver of his 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

104. Defendant Whylie 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. Defendant Whylie shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action.

VI. MISCELLANEOUS PROVISIONS

105. Notice: All notices required to be given by any provision in this Consent Order shall be sent by certified mail, return receipt requested, as follows:

Notice to Commission:

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

Notice to Defendant Whylie:

Kevin P. Whylie
10626 77th St., 2nd Floor
Ozone Park, NY 11417

All such notices to the Commission shall reference the name and docket number of this action.

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

107. 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.

108. **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.

109. **Waiver:** The failure of any party to this Consent Order or of any customers or clients at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party, customer, or client 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.

110. **Waiver of Service, and Acknowledgement:** Defendant Whyllie 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 Defendant Whyllie of its terms and conditions.

111. **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 Defendant Whyllie to modify or for relief from the terms of this Consent Order.

112. **Injunctive and Equitable Relief Provisions:** The injunctive and equitable relief provisions of this Consent Order shall be binding upon Defendant Whyllie, 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 Defendant Whylie.

113. 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.

114. Contempt: Defendant Whylie 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.

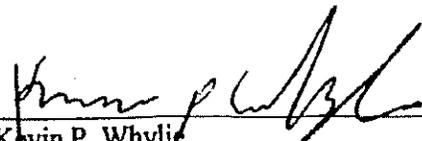
115. Agreements and Undertakings: Defendant Whylie shall comply with all of the undertakings and agreements set forth in this Consent Order.

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 Penalties and Other Equitable Relief Against Defendant Kevin P. Whylie* forthwith and without further notice.

IT IS SO ORDERED on this 23rd day of October, 2018.


LORETTA A. PRESKA
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:



Kevin P. Whylic
10626 77th St., 2nd Floor
Ozone Park, NY 11417

Date: 7/6/2018



R. Stephen Painter, Jr.
Chief Trial Attorney
Commodity Futures Trading Commission
140 Broadway, 19th Floor
New York, NY 10005
(646) 746-9815 (office)
(646) 746-9739 (fax)
spainter@cftc.gov

Date: 10/22/18

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

ALGOINTERACTIVE INC, KEVIN P. WHYLIE,
and MATTHEW JAMES ZECCHINI,

Defendants.

Case No. 18-cv-3177-LAP-KNF

CERTIFICATE OF SERVICE

The undersigned, an attorney with Plaintiff Commodity Futures Trading Commission, hereby certifies that on October 22, 2018, a true and accurate copy of the foregoing [Proposed] Consent Order was served via email (by written consent) upon the following parties:

Kevin P. Whylie (kevinwhylic@yahoo.com)

Matthew James Zecchini (mzecchini1989@gmail.com)

The undersigned further certifies that on October 22, 2018, a true and accurate copy of the foregoing was served via U.S. mail upon the following party:

Algointeractive Inc
c/o Spiegel & Utrera P.A., P.C.
1 Maiden Lane, 5th Floor
New York, NY 10038

Dated: October 22, 2018

s/ David C. Newman
David C. Newman
Commodity Futures Trading Commission
140 Broadway, 19th Floor
New York, NY 10005
dnewman@cftc.gov
(646) 746-9740