

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

Case No. 3:17-cv-774-J-32MCR

JASON B. SCHARF, CIT
INVESTMENTS LLC,
BREVSPAND EOOD, CIT
INVESTMENTS LTD., A&J MEDIA
PARTNERS, INC., MICHAEL
SHAH, and ZILMIL, INC.,

Defendants.

**CONSENT ORDER FOR PERMANENT INJUNCTION, CIVIL
MONETARY PENALTY, AND OTHER EQUITABLE RELIEF AGAINST
DEFENDANTS MICHAEL SHAH AND ZILMIL, INC.**

I. INTRODUCTION

On July 10, 2017, Plaintiff Commodity Futures Trading Commission (the “Commission” or “CFTC”) filed a Complaint for Injunctive Relief and Demand for Jury Trial (Doc. 3) against Defendants Jason B. Scharf (d/b/a Citrades.com and AutoTradingBinary.com) (“Scharf”), CIT Investments LLC; Brevspand EOOD, CIT Investments Ltd., A&J Media Partners, Inc. (“A&J Media”), Michael Shah (“Shah”), and Zilmil, Inc. (“Zilmil”) (collectively,

“Defendants”) seeking injunctive and other equitable relief, as well as the imposition of civil 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. pts. 1–190 (2017). The Court entered an *ex parte* statutory restraining order against Defendants on July 12, 2017 (Doc. 8), and on August 9, 2017, the Court issued a Consent Order for Preliminary Injunction (“PI Order”) against Defendants Scharf, A&J Media, Shah, and Zilmil (Doc. 32).

II. CONSENTS AND AGREEMENTS

To effect settlement of all charges alleged in the Complaint against Defendants Michael Shah and Zilmil, Inc. (the “Zilmil Defendants”) without a trial on the merits or any further judicial proceedings, the Zilmil Defendants:

1. Consent to the entry of this Consent Order for Permanent Injunction and Other Statutory and Equitable Relief Against Defendants Michael Shah and Zilmil, Inc. (“Consent Order”);

2. Affirm that they have 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. Acknowledge service of the summons and Complaint;

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

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

7. Waive:

(a) Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2018), relating to, or arising from, this action;

(b) Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this 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. Consent to the continued jurisdiction of this Court over them 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 the

Zilmil Defendants now or in the future reside outside the jurisdiction of this Court;

9. Agree that they 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 waive any objection based thereon;

10. Agree that Kenneth Dante Murena of DAMIAN & VALORI LLP, 1000 Brickell Ave., Suite 1020, Miami, FL 33131 will continue in his role as Permanent Receiver (“Permanent Receiver”) pursuant to the PI Order, with the full powers of an equity receiver and as further set forth in Part V of this Consent Order, for the Zilmil Defendants and their affiliates and subsidiaries (hereinafter “Receivership Defendants”), and for all of the funds, properties, premises, accounts, income, money now or hereafter due or owing to the Receivership Defendants, and other assets directly or indirectly owned, beneficially or otherwise, by the Receivership Defendants (hereinafter “Receivership Estate”).

11. Agree that neither they nor any of their agents or employees under their 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 their: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. The Zilmil Defendants shall comply with this agreement, and shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement;

12. Consent 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 they admit.

13. Consent 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 the Permanent Receiver or to which the Commission or the Permanent Receiver is a party or claimant, and agree that they shall be taken as true and correct and be given preclusive effect therein, without further proof.

14. Do 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: proceeding in bankruptcy, or receivership; or proceeding to enforce the terms of this Consent Order;

15. Agree to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 71 of Part VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against them, whether inside or outside the United States; and

16. Agree 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 the Zilmil Defendants in any other proceeding.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

17. 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

1. The Parties to this Consent Order

18. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act and the Commission Regulations.

19. Defendant Michael Shah is a natural person who resides in Jacksonville, Florida. Shah has never been registered with the Commission in any capacity.

20. Defendant Zilmil, Inc. is a Florida Corporation with its principal place of business in Jacksonville, Florida. Zilmil has never been registered with the Commission in any capacity.

21. Defendant Shah controlled and supervised the day-to-day operations of Zilmil. Shah is a signatory to and controlled Zilmil's bank accounts. Shah is the president, director, and shareholder of Zilmil. He also entered into contracts on behalf of Zilmil.

2. Binary Options

22. A binary option is a type of option contract in which the payout depends entirely on the outcome of a yes/no proposition. The yes/no proposition typically relates to whether the price of a particular asset will rise above, or fall below, a specified amount at a specified date and time. For example, the yes/no proposition might be whether the price of silver will be higher than \$33.40 per ounce at 11:17 am on a particular day.

23. Once the option holder acquires a binary option through payment of a premium, there is no further decision for the holder to make as to whether or not to exercise the binary option because binary options exercise automatically. Unlike other types of options, a binary option does not give the

holder the right to purchase or sell the underlying asset—instead, it is “cash settled.” When the binary option expires, the option holder is entitled to a pre-determined amount of money if the customer has made a correct prediction. If the customer has made an incorrect prediction, he or she gets nothing and loses the premium paid.

24. There are only three designated contract markets currently authorized to offer binary options that are commodity options transactions to retail customers in the U.S.: Cantor Exchange LP, Chicago Mercantile Exchange, Inc., and the North American Derivatives Exchange, Inc. All other entities offering binary options in the U.S. or to U.S. customers are doing so illegally.

3. Defendants’ Binary Options Scam

25. From at least June 2013 through July 10, 2017 (the “Relevant Period”), Defendants Scharf, CIT Investments LLC, Brevspand EOOD, CIT Investments Ltd., and A&J Media (collectively, the “Citrades Defendants”), operated an illegal binary options scam using the instrumentalities of interstate commerce, including through various websites, such as www.citrades.com (“Citrades Website”).

26. During the Relevant Period, the Zilmil Defendants were third-party “affiliate marketers” who drove internet traffic, i.e., customers, to the Citrades Website and numerous other illegal binary options websites using

the instrumentalities of interstate commerce, including by offering so-called binary options autotrading systems with names like “Millionaire Money Machine.”

a. The Citrades Defendants’ False and Misleading Representations and Omissions and Misappropriation

27. The Citrades Website, which falsely claimed to be the “leading platform” for trading binary options online, made false and misleading statements concerning the likelihood of profit and the risk of loss from trading binary options.

28. In order to entice customers to open binary options trading accounts, the Citrades Website featured fabricated testimonials and false representations from imaginary customers. The testimonials on the Citrades Website completely omitted required disclosures including: (a) that the testimonial may not be representative of the experience of other clients; or (b) that the testimonial is not a guarantee of future performance or success.

29. The Citrades Defendants also sent emails to, and employed sales representatives who called, current and potential customers, falsely promising “guaranteed returns” of as much as 100% and failing to apprise customers of the risk of loss from trading in binary options.

30. When a customer sought to open a binary options trading account, the Citrades Defendants instructed the customer to wire money to one of

several overseas bank accounts controlled by Scharf or provide their credit card information via email.

31. Once a customer had deposited money into an account, the Citrades Defendants typically refused to return the customer's money, sometimes by using various pretexts and sometimes by outright ignoring customer requests.

32. The Citrades Defendants ultimately used customer funds to pay the business and personal expenses of the Citrades Defendants and others at Scharf's direction.

33. Internal Citrades business records demonstrate that the Citrades Defendants received more than \$16 million in customer funds from at least 8,000 customers between the summer of 2013 and summer of 2015. Most of these customers resided in the United States, including within the Middle District of Florida.

b. The Zilmil Defendants' Autotrading Systems and Affiliate Marketing Scam

34. The Zilmil Defendants' autotrading systems essentially functioned as ad campaigns designed to drive, or funnel, customers to binary options websites. Customers who signed up for one of the Zilmil Defendants' systems were instructed to open and fund an account with a binary options website, such as the Citrades Website. Once the customer funded an account,

autotrading systems offered by the Zilmil Defendants placed trades in the customer's binary options account until the customer's account was depleted.

35. The Zilmil Defendants received a commission of up to \$450 for every customer that deposited money with a binary options firm.

36. Zilmil claimed to be one of the biggest affiliate marketers in the binary option industry. The Zilmil Defendants were responsible for inducing thousands of people to deposit money with binary options websites, including the Citrades Website, during the Relevant Period.

37. During the Relevant Period, the Zilmil Defendants made more than \$17.8 million from the sale of its autotrading systems and commissions from the binary options websites, at least \$500,000 of which came from the Citrades Defendants.

38. The Zilmil Defendants knew that their autotrading systems did not work as advertised, and were in fact designed to deplete customer accounts, but did not disclose this.

39. The Zilmil Defendants promoted their systems on the internet through websites called "landing pages" and through mass emails.

40. The Zilmil Defendants' landing pages typically consisted of a single web page, often with a streaming video, along with a field for the customer to sign to purchase the system. They contained numerous false and misleading statements and omissions about the performance of the trading

systems, e.g., that trading profits were guaranteed. The Zilmil Defendants failed to disclose that customers did not achieve the outsize profits touted on the landing pages, and that they created and hosted the landing pages. The Zilmil Defendants further failed to disclose the risks associated with trading off-exchange binary options and that they were paid by binary options websites for every first-time depositor.

41. The Zilmil Defendants' mass emails numbered more than 60 million sent to more than 1.4 million unique email addresses in just one seven-month period. They typically directed customers to open accounts with various binary options websites to which the Zilmil Defendants drove traffic, and they contained numerous false and misleading statements about the performance of the trading systems, e.g., that customers could make "millions" with the systems. The Zilmil Defendants did not disclose that they wrote and sent the emails, nor did they disclose that they were paid by binary options websites for sending them customers.

42. Customer testimonials used by the Zilmil Defendants in at least some of their advertising materials omitted required disclosures including: (a) that the testimonial may not be representative of the experience of other clients; or (b) that the testimonial is not a guarantee of future performance or success.

B. Conclusions of Law

1. Jurisdiction and Venue

43. This Court possesses jurisdiction over this action pursuant to 28 U.S.C. § 1331 (2012) (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (2012) (providing that U.S. district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2012), provides the Commission may bring actions for injunctive relief or to enforce compliance with the Act or any rule, regulation, or order thereunder in the proper district court of the United States 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 thereunder.

44. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because Defendant Shah resides in this district and the acts and practices in violation of the Act and Commission Regulations occurred within this District, among other places.

2. Violations of the Commodity Exchange Act and Regulations

a. Illegal Off-Exchange Commodity Options

45. By the conduct described in paragraphs 18 through 42 above, the Zilmil Defendants offered to enter into, entered into, or confirmed the

execution of any transaction involving commodity options in interstate commerce, other than on a registered exchange or exempt foreign exchange, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), and Commission Regulation 32.2, 17 C.F.R. § 32.2 (2018).¹

b. Unregistered CTA

46. By the conduct described in paragraphs 18 through 42 above, the Zilmil Defendants, using the instrumentalities of interstate commerce and for compensation or profit, engaged in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of, or the advisability of, trading in swaps and commodity options without being registered with the Commission as a Commodity Trading Advisor (“CTA”), in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012).

c. Options Fraud

47. By the conduct described in paragraphs 18 through 42 above, the Zilmil Defendants offered to enter into, entered into, or confirmed the execution of any transaction involving commodity options, and using the instrumentalities of interstate commerce: cheated or defrauded, or attempted to cheat or defraud, customers and prospective customers; made or caused to

¹ The Court modified this language to more closely mirror the statutory language. 7 U.S.C. § 6c(b). In this case the parties contested whether the regulations impermissibly expanded the scope of the statute. (See Docs. 135; 136; 147; 148). Because of settlement, the Court did not need to make a ruling on that issue. As Zilmil’s consented to conduct comes within the language of the statute, it is unnecessary to include the additional clauses from the regulation.

be made false reports and statements to customers and potential customers; and deceived or attempted to deceive customers and prospective customers, in violation of 7 U.S.C. § 6c(b) and Commission Regulation 32.4, 17 C.F.R. § 32.4 (2018).²

d. CTA Fraud and CTA Advertising Violations

48. By the conduct described in paragraphs 18 through 42 above, the Zilmil Defendants, while acting as a CTA within the meaning of the Act and using the instrumentalities of interstate commerce, employed a device, scheme, or artifice to defraud customers and prospective customers, and engaged in a transaction, practice, or course of business which operates as a fraud or deceit upon customers and prospective customers, in violation of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A), (B) (2012).

49. By the conduct described in paragraphs 18 through 42 above, the Zilmil Defendants, while acting as a CTA within the meaning of the Act and using the instrumentalities of interstate commerce, advertised in a manner which employs a device, scheme, or artifice to defraud customers and prospective customers, involved a transaction, practice, or course of business which operates as a fraud or deceit upon customers and prospective customers, and referred to testimonials without prominently disclosing that the testimonial (i) may not be representative of the experience of other clients,

² See supra note 1.

and (ii) is no guarantee of future performance or success, in violation of Commission Regulation 4.41(a)(1)-(3), 17 C.F.R. § 4.41(a)(1)-(3) (2018).

e. Manipulative and Deceptive Device

50. By the conduct described in paragraphs 18 through 42 above, the Zilmil Defendants, directly or indirectly, in connection with any swap, intentionally or recklessly: used or employed, or attempted to use or employ, any manipulative device, scheme, or artifice to defraud; made, or attempted to make, any untrue or misleading statement of a material fact or omitting to state a material fact necessary in order to make the statements made not untrue or misleading; and engaged, or attempted 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) (2012), and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2018).

f. The Zilmil Defendants are Liable for Each Other's Violations of the Act and Commission Regulations Under Principles of Controlling Person and Principal-Agent Liability

51. Defendant Shah controlled Defendant Zilmil, directly or indirectly, and, through the conduct set forth in paragraphs 18 through 42 above, did not act in good faith or knowingly induced, directly or indirectly, Zilmil's acts in violation of the Act and Commission Regulations. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Shah is liable for

Zilmil's violations of 7 U.S.C. §§ 6c(b), 6m(1), 6o(1)(A), (B), and 9(1) and 17 C.F.R. §§ 4.41(a)(1)-(3), 32.2, 32.4, and 180.1(a)(1)-(3) only to the extent of Defendant Shah's Restitution Obligation and CMP Obligation as set forth in Part V of this Consent Order.

52. The foregoing acts, omissions, and failures of Defendant Shah set forth in paragraphs 18 through 42 above occurred within the scope of his employment, office, or agency with Defendant Zilmil. Therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2018), Zilmil is liable for Shah's acts, omissions, and failures in violation of 7 U.S.C. §§ 6c(b), 6m(1), 6o(1)(A), (B), and 9(1) and 17 C.F.R. §§ 4.41(a)(1)-(3), 32.2, 32.4, and 180.1(a)(1)-(3).

g. The Zilmil Defendants Aided and Abetted Certain of the Citrades Defendants' Violations of the Act and Commission Regulations

53. By the conduct described in paragraphs 18 through 42 above, Defendant Zilmil willfully aided, abetted, counseled and worked in combination and in concert with the Citrades Defendants in the Citrades Defendants' wrongful conduct. Therefore, pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a), Defendant Zilmil is liable for the Citrades Defendants' violations of 7 U.S.C. §§ 6c(b), 6o(1)(A), (B), and 9(1) and 17 C.F.R. §§ 4.41(a)(1)-(3), 32.4, and 180.1(a)(1)-(3).

54. Unless restrained and enjoined by this Court, there is a reasonable likelihood that the Zilmil Defendants 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:

55. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), the Zilmil Defendants are permanently restrained, enjoined, and prohibited from directly or indirectly:

- a. offering to enter into, entering into, or confirming the execution of, any transaction involving any commodity options in interstate commerce, other than on a registered exchange or exempt foreign exchange, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), and Commission Regulation 32.2, 17 C.F.R. § 32.2 (2018);³
- b. using the instrumentalities of interstate commerce and for compensation or profit, engaging in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of, or the advisability of,

³ See supra note 1.

trading in swaps and commodity options, without being registered with the Commission as a CTA, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012);

- c. offering to enter into, entering into, or confirming the execution of, any transaction involving commodity options, and using the instrumentalities of interstate commerce while cheating or defrauding, or attempting to cheat or defraud, customers and prospective customers; making or causing to be made false reports and statements to customers and potential customers; and deceiving or attempting to deceive customers and prospective customers, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), and Commission Regulation 32.4, 17 C.F.R. § 32.4 (2018);⁴
- d. while acting as a CTA within the meaning of the Act and using the instrumentalities of interstate commerce, employing a device, scheme, or artifice to defraud customers and prospective customers, and engaging in a transaction, practice, or course of business which operates as a fraud or deceit upon customers and prospective customers, in

⁴ See supra note 1.

violation of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A), (B) (2012);

- e. while acting as a CTA within the meaning of the Act and using the instrumentalities of interstate commerce, advertising in a manner which employs a device, scheme, or artifice to defraud customers and prospective customers, involved a transaction, practice, or course of business which operates as a fraud or deceit upon customers and prospective customers, and referred to testimonials without prominently disclosing that the testimonial (i) may not be representative of the experience of other clients, and (ii) is no guarantee of future performance or success, in violation of Commission Regulation 4.41(a)(1)-(3), 17 C.F.R. § 4.41(a)(1)-(3) (2018);
- f. directly or indirectly, in connection with any swap, intentionally or recklessly: using or employing, or attempting to use or employ, any manipulative device, scheme, or artifice to defraud; making, or attempting to make, any untrue or misleading statement of a material fact or omitting to state a material fact necessary in order to make the statements made not untrue or misleading; and

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) (2012), and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2018).

56. The Zilmil Defendants are also permanently restrained, enjoined, and prohibited from directly or indirectly:

- a. Offering to enter into, entering into, confirming the execution of, maintaining positions in, or otherwise conducting activities relating to binary options;
- b. Acting as an affiliate marketer in any capacity that involves binary options or any “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2018));
- c. Offering so-called autotrading systems or services that purport to trade binary options or any “commodity interests” (as that term is defined in 17 C.F.R. § 1.3);
- d. 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));
- e. Entering into any transactions involving “commodity interests” (as that term is defined in 17 C.F.R. § 1.3) for

their own personal accounts or for any accounts in which they have a direct or indirect interest for a period of five years from the date of the entry of this Consent Order;

- f. Having any commodity interests traded on their behalf for a period of five years from the date of the entry of this Consent Order;
- g. 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 for a period of five years from the date of the entry of this Consent Order;
- h. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- i. 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

- j. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2018)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)), registered, 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) (2018).

V. RESTITUTION AND CIVIL MONETARY PENALTY

A. Permanent Receiver

57. Kenneth Dante Murena of DAMIAN & VALORI LLP, 1000 Brickell Ave., Suite 1020, Miami, FL 33131 will continue in his role as Permanent Receiver pursuant to the PI Order, with the full powers of an equity receiver, for the Zilmil Defendants and their affiliates and subsidiaries (hereinafter “Receivership Defendants”), and for all of the funds, properties, premises, accounts, income, money now or hereafter due or owing to the Receivership Defendants, and other assets directly or indirectly owned, beneficially or otherwise, by the Receivership Defendants (hereinafter “Receivership Estate”).

58. The Permanent Receiver is, and continues to be, directed and authorized by this Court to accomplish the following:

A. Assume full control of the Receivership Defendants by removing the Zilmil Defendants, and any officer, independent contractor, employee, or agent of the Receivership Defendants, from control and management of the affairs of the Receivership Defendants;

B. Take exclusive custody, control, and possession of the Receivership Estate with the full power to sue for, collect, receive, and take possession of all goods, chattels, rights, credits, moneys, effects, land, leases, books, records, work papers, and records of accounts, including computer-maintained information, contracts, financial records, monies on hand in banks and other financial institutions, and other papers and documents of the Receivership Defendants and customers or clients whose interests are now held by or under the direction, possession, custody, or control of the Receivership Defendants;

C. Perform all acts necessary, including the suspension of operations, to conserve, hold, manage, and preserve the value of the Receivership Estate in order to prevent an irreparable loss, damage, or injury to customers or clients;

D. Prevent the withdrawal or misapplication of funds entrusted to the Receivership Defendants, and otherwise protect the interests of customers or clients;

E. Manage and administer the Receivership Defendants and the Receivership Estate by performing all acts incidental thereto that the Permanent Receiver deems appropriate, including hiring or dismissing any and all personnel, suspending operations, and/or entering into agreements, including but not limited to: (1) the retention and employment of investigators, attorneys, or accountants of the Permanent Receiver's choice, including without limitation members and employees of the Permanent Receiver's firm, to assist, advise, and represent the Permanent Receiver; and (2) the movement and storage of any equipment, furniture, records, files, or other physical property of the Receivership Defendants;

F. Collect all money owed to the Receivership Defendants;

G. Initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions or proceedings in state, federal, or foreign court that the Permanent Receiver deems necessary and advisable to preserve or increase the value of the Receivership Estate or that the Permanent Receiver deems necessary and advisable to carry out the Permanent Receiver's mandate under this Order;

H. Choose, engage, and employ attorneys, accountants, appraisers, and other independent contractors and technical specialists, as the Permanent Receiver deems advisable or necessary in the

performance of duties and responsibilities under the authority granted by this Order;

I. Issue subpoenas to obtain documents and records pertaining to the Receivership and conduct discovery in this action on behalf of the Receivership Estate;

J. Open one or more bank accounts and deposit all funds of the Receivership Estate in such designated accounts and make all payments and disbursements from the Receivership Estate from such accounts;

K. Make payments and disbursements from the Receivership Estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order, provided that the Permanent Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Receivership Defendants prior to the date of entry of this Order, except for payments that the Permanent Receiver deems necessary or advisable to secure the Receivership Estate from immediate and irreparable loss;

L. Maintain written accounts itemizing receipts and expenditures, describing properties held or managed, and naming the depositories holding funds or other assets of the Receivership Estate; make such written accounts and supporting documentation available to the Commission for inspection; and, periodically, or as directed by the

Court, file with the Court and serve on the parties a report summarizing efforts to marshal and collect assets, administer the Receivership Estate, and otherwise perform the duties mandated by this Order.

M. The assets of Defendant Shah affected by this Consent Order shall include only existing assets and shall not affect assets exempted under the PI Order (Doc. 32 ¶ 20).

N. The Receivership as to Defendant Shah shall terminate upon his payment of the full amount of his Restitution Obligation, subject to Court approval.

B. Restitution

59. Defendant Shah shall pay restitution in the amount of nine million, three hundred thousand dollars (\$9,300,000), and Defendant Zilmil shall pay restitution in the amount of eight million, five hundred fifty-four thousand, two hundred eighty nine dollars and sixty nine cents (\$8,554,289.69) (collectively, “Restitution Obligation”), within ten days of the date of entry of this Consent Order. If the Restitution Obligation is not paid in full within ten 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).

60. The Court-appointed Permanent Receiver shall pursue and collect restitution payments from the Zilmil Defendants and make distributions as set forth below. Because the Permanent Receiver is acting as an officer of this Court in performing these services, the Permanent Receiver shall not be liable for any action or inaction, other than actions involving fraud.

61. The Zilmil Defendants shall make Restitution Obligation payments to the Permanent Receiver and shall send such Restitution Obligation payments and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order to the Permanent Receiver at the office of DAMIAN & VALORI LLP, 1000 Brickell Ave., Suite 1020, Miami, FL 33131 with a cover letter that identifies the paying Defendant and the name and docket number of this proceeding. The paying Defendant 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.

62. The Permanent Receiver shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to the Zilmil Defendants' customers or may defer distribution until such time as the Permanent Receiver deems appropriate. The Permanent Receiver shall propose a distribution plan to the

Court within 60 days of entry of this Consent Order. In the event that the amount of Restitution Obligation payments to the Permanent Receiver are of a *de minimis* nature such that the Permanent Receiver determines that the administrative cost of making a distribution to eligible customers is impractical, or in the event that the amount of Restitution Obligation payments to the Permanent Receiver exceed the Restitution Obligation, the Permanent Receiver may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Permanent Receiver shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part B. below.

63. The Zilmil Defendants shall cooperate with the Permanent Receiver as appropriate to provide such information as the Permanent Receiver deems necessary and appropriate to identify the customers to whom the Permanent Receiver, in his sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. The Zilmil Defendants shall execute any documents necessary to release funds that they have in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

64. Until discharged by the Court, the Permanent Receiver shall provide the Commission at the beginning of each calendar year with a report

detailing the disbursement of funds to the Zilmil Defendants' customers during the previous year. The Permanent Receiver 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.

65. The amounts payable to each customer shall not limit the ability of any customer to prove that a greater amount is owed by the Zilmil Defendants 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.

66. To the extent that any funds accrue to the U.S. Treasury for satisfaction of the Zilmil Defendants' Restitution Obligation, such funds shall be transferred to the Permanent Receiver for disbursement in accordance with the procedures set forth above.

C. Civil Monetary Penalty

67. Defendant Shah shall pay a civil monetary penalty of one million dollars (\$1,000,000), and Defendant Zilmil shall pay a civil monetary penalty of four million dollars (\$4,000,000) (collectively, "CMP Obligation") within thirty days of the date of entry of this Consent Order. If the CMP Obligation is not paid in full within thirty 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).

68. All payments by Defendants Shah and Zilmil, regardless of whether the assets are currently held by the Permanent Receiver, shall first be applied to Defendants Shah's and Zilmil's restitution obligations before being applied to their civil monetary penalty obligations.⁵

69. Defendant Shah's civil financial liability arising from the claims asserted in this proceeding shall be deemed fully satisfied upon his payment of the full amount of his portion of the Restitution and CMP Obligation.

70. The Zilmil Defendants shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 181

⁵ This paragraph was added by the Court.

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, the Zilmil Defendants shall contact Marie Thorne or her successor at the address above to receive payment instructions and shall fully comply with those instructions. The Zilmil Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies the Zilmil Defendants and the name and docket number of this proceeding. The Zilmil Defendants shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

D. Provisions Related to Monetary Sanctions

71. Partial Satisfaction: Acceptance by the Commission of any partial payment of the Zilmil Defendants' Restitution Obligation or CMP Obligation shall not be deemed a waiver of their 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.

VI. MISCELLANEOUS PROVISIONS

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

Notice to Commission:

Rosemary Hollinger, Deputy Director, C/O Scott Williamson
U.S. Commodity Futures Trading Commission, Division of
Enforcement
525 W. Monroe St., Suite 1100
Chicago, IL 60661

Notice to Defendants Michael Shah and Zilmil, Inc.:

Peter B. King
WIAND GUERRA KING P.A.
5505 W. Gray Street
Tampa, FL 33609
pking@wiandlaw.com
jmaglich@wiandlaw.com

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

73. Change of Address/Phone: Until such time as the Zilmil Defendants satisfy in full their Restitution Obligation and CMP Obligation as set forth in this Consent Order, the Zilmil Defendants shall provide written notice to the Commission by certified mail of any change to their telephone number or mailing address within ten calendar days of the change.

74. 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.

75. 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.

76. Waiver: The failure of any party to this Consent Order or of any customer or client 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 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.

77. 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 the Zilmil Defendants to modify or for relief from the terms of this Consent Order.

78. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon the Zilmil Defendants, upon any person under their 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 the Zilmil Defendants.

79. Authority: Undersigned Counsel for Zilmil hereby warrants that he is the attorney for Michael Shah, the president, director, and sole shareholder of Zilmil, Inc., and that this Consent Order has been duly authorized by Zilmil, Inc. and he has been duly empowered to sign and submit this Consent Order on behalf of Zilmil, Inc.

80. 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.

81. Contempt: The Zilmil Defendants understand that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings they may not challenge the validity of this Consent Order.

DONE AND ORDERED in Jacksonville, Florida this 25th day of April, 2019.



TIMOTHY J. CORRIGAN

United States District Judge

jb
Copies:

Counsel of record

CONSENTED TO AND APPROVED BY:

MICHAEL SHAH

Zilmil, Inc.

Date: 12/17/2018

MICHAEL SHAH

Michael Shah, individually

Date: 12/17/2018

Approved as to form:

Peter B. King

Peter B. King
WIAND GUERRA KING P.A.
Attorney for Defendants
Michael Shah and Zilmil, Inc.
5505 W. Gray Street
Tampa, FL 33609
Tel.: 813.347.5103
pking@wiandlaw.com

Date: 12.17.18

Ashley J. Burden, trial counsel
Stephanie Reinhart, trial counsel
Joseph Konizeski, trial counsel
Rosemary Hollinger
Scott R. Williamson

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sreinhart@cftc.gov
jkonizeski@cftc.gov
rhollinger@cftc.gov
swilliamson@cftc.gov

Date: _____

CONSENTED TO AND APPROVED BY:

Zilmil, Inc.

Date: _____

Michael Shah, individually

Date: _____

Approved as to form:

Peter B. King
WIAND GUERRA KING P.A.
Attorney for Defendants
Michael Shah and Zilmil, Inc.
5505 W. Gray Street
Tampa, FL 33609
Tel.: 813.347.5103
pking@wiandlaw.com

Date: _____

/s/ Ashley J. Burden

Ashley J. Burden, trial counsel
Stephanie Reinhart, trial counsel
Joseph Konizeski, trial counsel
Rosemary Hollinger
Scott R. Williamson

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rhollinger@cftc.gov
swilliamson@cftc.gov

Date: _____