



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
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Office of Proceedings

In the Matter of:

Victor E. Cilli, and
Progressive Investment Funds LLC,

Registrants.

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CFTC Docket No. SD 12-09

INITIAL DECISION ON DEFAULT

Before: Philip V. McGuire,
Commodity Futures Trading Commission

Appearances: David Acevedo, Chief Trial Attorney
W. Derek Shakabpa, Esq., Senior Trial Attorney,
CFTC Division of Enforcement
New York, NY

Background

By motion dated December 5, 2012, the Commission's Division of Enforcement ("Division") has moved for entry of a default judgment against Progressive Investment Funds LLC ("PIF"), a commodity pool operator, and Victor E. Cilli ("Cilli"), an associated person with, and sole principal of, PIF, pursuant to Commission rules 3.60(g) and 10.93, 17 C.F.R. §§ 3.60(g) and 10.93 (2012), based on the failure of Cilli and PIF to answer or otherwise to appear or respond to the Notice of Intent to Revoke the Registration of Victor E. Cilli and Progressive

Investment Funds LLC (“Notice”), issued by the Commission and filed by the Division on September 21, 2012.

On September 24, 2012, the Commission’s Notice was served on Cilli and PIF at the last address, in Hackensack, New Jersey, that Cilli had provided the National Futures Association for communications from the Commission. On October 12, 2012, the Commission’s Notice was served on PIF at an alternate Glenrock, New Jersey address which Cilli had provided the NFA for service of Commission orders.¹ Thus, Cilli and PIF were properly served pursuant to CFTC rule 3.50.²

Cilli and PIF did not respond to the Commission’s Notice. Therefore, on November 7, 2012, I issued a Default Notice finding that Cilli and PIF were in default. On November 14, 2012, a copy of the Default Notice, with the Commission’s Notice attached, was forwarded to Cilli at his current residence at the U.S. Penitentiary Lewisburg, Lewisburg, Pennsylvania.³ Cilli and PIF did not file a response to the Default Notice. Accordingly, this matter is ripe for entry of a default judgment.

As a result of their defaults, Cilli and PIF have waived a hearing on all of the issues and are precluded from introducing evidence of mitigation and rehabilitation necessary to overcome

¹ See Guard Affidavits and Certifications, Exhibits 1 and 2, Division’s December 5th motion.

² Pursuant to CFTC rule 3.30(a), 17 C.F.R. § 3.30(a) (2012), the address of each registrant as submitted on its application for registration or as submitted on the biographical supplement shall be deemed to be the address for delivery to the registrant for any communications from the Commission, including any summons, complaint, notice and other written documents or correspondence, unless the registrant specifies another address for this purpose. CFTC rule 3.30(b), 17 C.F.R. § 3.30(b) (2012), provides that each registrant, while registered and for two years after the termination of registration, must notify the National Futures Association (“NFA”) of any change of address, and that failure to do so may result in an order of default in any Commission or NFA proceedings. Moreover, pursuant to CFTC rule 3.50, 17 C.F.R. § 3.50 (2012), for purposes of an action for the denial, suspension or revocation of registration, service upon a registrant will be sufficient if mailed by registered mail or certified mail return receipt requested properly addressed to the registrant at the address shown on his application or any amendment thereto, and will be complete upon mailing.

³ See Exhibit 6, Division’s December 5th motion.

the presumption of unfitness for registration.⁴ In addition, the well-plead allegations in the Notice, as augmented by the evidence and supplemented by the proposed findings and conclusions in the Division's motion, are deemed true and conclusive for purposes of finding: one, that Cilli is statutorily disqualified from registration under Sections 8a(2)(C), (D) and (E) of the Commodity Exchange Act ("Act") as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 ("CRA")), §§ 13102 – 13204, 122 Stat. 1651 (enacted June 18, 2008), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010) ("Dodd-Frank Act"), §§ 701-774 (enacted July 16, 2010), to be codified at 7 U.S.C. §§ 12a(2)(C), (D) and (E); and two, that PIF is statutorily disqualified under section 8a(2)(C), (E) and (H) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C §§ 12a(2)(C), (E) and (H). Thus, as set out below, the Division's motion has been granted, Cilli and PIF have been found to be statutorily disqualified from registration, and PIF's registration and Cilli's registration have been revoked.

Findings of Fact

1. Progressive Investment Funds LLC, is a Delaware limited liability company whose listed address with the Commission is 403 S. Maple Avenue, Glenrock, New Jersey. PIF is not a financial institution, registered broker dealer (or their associated person), insurance company, bank holding company, or investment bank holding company. PIF has been registered with the

⁴The presumption of unfitness for registration under Section 8a(2) of the Act rests on the common-sense inference that once an individual or firm has undertaken serious wrongdoing – as it has been amply demonstrated that Cilli and PIF have done – a substantial risk exists that the individual or firm will undertake similar wrongdoing in the future. *See In re Akar*, Comm. Fut. L. Rep. ¶ 22, 297 (CFTC February 24, 1986).

Commission as a commodity pool operator since September 27, 2006, pursuant to Section 4m of the Act, as amended by the Dodd- Frank Act, to be codified at 7 U.S.C. § 6m.

2. Victor E. Cilli, since September 2006, has been registered as an associated person of PIF and is listed as the president and sole principal of PIF.⁵ Cilli's last address listed with the Commission is 170 Prospect Avenue, PH 2, Hackensack, New Jersey, 07601. Cilli is currently incarcerated in the U.S. Penitentiary at Lewisburg, Pennsylvania.⁶

3. On June 15, 2011, the Commission filed a civil injunctive complaint in the U.S. District Court for the District of New Jersey against Cilli and PIF ("complaint"). *CFTC v. Victor Eugene Cilli and Progressive Investment Funds LLC*, Case No. 2:11-CV-03445WJM (D. NJ 2011) ("*CFTC v. Cilli*"). The Commission's complaint alleged, *inter alia*, that from at least September 2006 through approximately September 2007, Cilli had operated a Ponzi scheme that defrauded at least four commodity pool participants out of about \$506,000: by falsely representing that Cilli's business and futures trading track was successful; by trading only \$263,000 of the pool's funds; by concealing the pool's actual trading losses of \$200,168, and falsely reporting purported trading profits to pool participants; by misappropriating at least \$200,000 of pool funds to pay for unauthorized personal expenses; and by making false statements to the NFA, and destroying, deleting, discarding, or losing books and records that were subject to a CFTC subpoena, all of which were violations of various Commission rules and various provisions the Commodity Exchange Act ("the Act"), as amended by the CRA, to be codified at 7 U.S.C. § 1 *et seq.*

⁵ *Id.*

⁶ On February 6, 2009: PIF was permanently barred from NFA membership, and Cilli agreed to withdraw his NFA membership, agreed that if he sought NFA membership or associate membership, or sought to become a principal of an NFA, the violations alleged – *i.e.*, that he had failed to cooperate with the NFA on an investigation of a customer complaint -- would be deemed admitted and used as the sole basis for denying him registration, NFA membership or associate membership, and/or principal status, and agreed to pay a \$10,000 fine if he ever re-applies for NFA membership. *In re. Victor E. Cilli and Progressive Investment Funds LLC*, NFA case number 08-BCC-9 (Decision Feb. 6, 2009).

4. On May 29, 2012, the District Court in *CFTC v. Cilli* entered a Consent Order for Permanent Injunction (“Consent Order”) which found, in relevant part, that Cilli, in violation of Sections 4(b)(a)(1)(A)-(C), and 4o(1)(A)-(B), of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6(b)(a)(1)(A)-(C), and 6o(1)(A)-(B), had engaged in a commodity pool Ponzi scheme in furtherance of which he had: misrepresented his business and trading record; failed to disclose substantial trading losses and instead sent to pool participants bogus IRS Forms 1099 and bogus reports which falsely showed trading profits; committed a minor portion of the pool's funds to actual trades; converted pool funds for his personal expenses; and concealed his fraudulent scheme by improperly using pool participant funds to make purported profit payments to other pool participants. The District Court also, *inter alia*, found PIF liable for Cilli's violations, and permanently enjoined Cilli and PIF from further violations of Sections 4(b)(a)(1)(A)-(C), and 4o(1)(A)-(B), of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6(b)(a)(1)(A)-(C), and 6o(1)(A)-(B), and assessed restitution of \$243,000 and a civil monetary penalty of \$474,000.

5. On October 3, 2011, in a separate criminal action, *U.S. v. Victor Cilli*, No. 11-CR-00660 (AET) (D. NJ, 2011), Cilli pled guilty to securities fraud, conspiring to commit bank fraud and tax evasion, based on the same set of facts as charged in *CFTC v. Cilli*. Cilli was convicted of conducting a Ponzi scheme that defrauded four commodity pool participants of \$506,000, trading only approximately \$263,000 of the pool funds, losing approximately \$200,168 of that amount, failing to disclose this information to the pool participants, sending some of the pool participants false statements showing profits, and misappropriating thousands of dollars to pay for personal expenses. On June 18, 2012, Cilli was sentenced to 36 months in prison and

assessed restitution of \$243,000.⁷

Conclusions of Law

Section 8a(2)(C) of the Act

Section 8a(2)(C) of the Commodity Exchange Act (“Act”), as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 12a(2)(C), in relevant part, authorizes the Commission to revoke the registration of any person “if such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction . . . including an order entered pursuant to an agreement of settlement to which the Commission . . . is a party, from . . . (i) acting as a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, [or] associated person of any registrant under this Act . . . or (ii) engaging in or continuing any activity when such activity involves . . . fraud . . .” Cause exists for statutory disqualification of Cilli and PIF pursuant to Section 8a(2)(C) of the Act because the Consent Order in *CFTC v. Cilli*, which was entered by the United States District Court for the District of New Jersey, a court of competent jurisdiction, permanently enjoins both Cilli and PIF from committing fraud in violation of the Act.

Section 8a(2)(D) of the Act

Section 8a(2)(D) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 12a(2)(D), in relevant part, authorizes the Commission to revoke the registration of any person “if such person has been convicted within ten years preceding the filing of the application for registration or any time thereafter of any felony that . . . (iv) involves the violation of section . . . 1343 . . . of title 18, United States Code . . .” Cause exists for the statutory disqualification of Cilli pursuant to

⁷ See Exhibits 3, 4 and 5, Division’s December 5th motion.

Section 8a(2)(D), based on his conviction in *U.S. v. Cilli* for fraud and misappropriation in connection with his operation of a commodity pool.

Section 8a(2)(E) of the Act

Section 8a(2)(E) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 12a(2)(E), in relevant part, authorizes the Commission to revoke the registration of any person "if such person, within ten years preceding the filing of the application [for registration] or any time thereafter, has been found in a proceeding brought by the Commission... (i) to have violated any provision of [the] Act... where such violation involves ... fraud [or] misappropriation of funds..." Cause also exists pursuant to Section 8a(2)(E) of the Act, because, *in CFTC v. Cilli*, Cilli and PIF were each found to have violated the Act for conduct involving fraud and misappropriation.

Section 8a(2)(H) of the Act

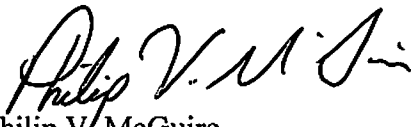
Section 8a(2)(H) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 12a(2)(H), in relevant part, authorizes the Commission to revoke the registration of any person if "revocation of the registration of any principal of such person would be warranted because of a statutory disqualification listed in this paragraph." Section 8a(2)(H) of the Act further provides that the term "principal," as used in Section 8a(2) of the Act, includes a general partner of a partnership or a person who owns more than 10% of the voting shares of a corporation. Because Cilli is listed with the Commission as PIF's sole principal, owns more than a 10% financial interest in PIF, and is subject to the revocation of his registration pursuant to Section 8a(2)(C), (D), and (E) of the Act, as amended, PIF's registration is also subject to revocation pursuant to Section 8a(2)(H) of the Act, as amended.

ORDER

Victor E. Cilli is statutorily disqualified from registration under Sections 8a(2)(C), (D) and (E) of the Commodity Exchange Act, and Progressive Investment Funds LLC is statutorily disqualified under Sections 8a(2)(C), (E) and (H) of the Commodity Exchange Act.

Accordingly: the Division's motion for entry of a default judgment is hereby granted; Victor E. Cilli and Progressive Investment Funds LLC are unfit for registration; and the registrations of Victor E. Cilli and Progressive Investment Funds LLC are hereby revoked.

Dated February 7, 2013.


Philip V. McGuire,
Judgment Officer