

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:) CFTC Docket No. SD ~~12~~-09
)
VICTOR E. CILLI and PROGRESSIVE INVESTMENT)
FUNDS LLC,)
)
)
Registrants.)
_____)

NOTICE OF INTENT TO REVOKE REGISTRATION
PURSUANT TO SECTIONS 8a(2)(C), (D), (E) AND (H) OF
THE COMMODITY EXCHANGE ACT, AS AMENDED

I.

The Commodity Futures Trading Commission (“Commission” or “CFTC”) has received information from its staff that tends to show, and the Commission’s Division of Enforcement (“Division”) alleges and is prepared to prove, that:

1. **Progressive Investment Funds, LLC (“PIF”)** is a Delaware limited liability company whose registered address with the Commission is 170 Prospect Avenue, PH2, Hackensack, NJ 07601.

2. Since September 2006, PIF has been registered with the Commission as a Commodity Pool Operator (“CPO”) operating under the exemptions of 17 C.F.R. § 4.7 (2012). PIF is the CPO and General Partner of the commodity pool Progressive Managed Futures Fund, LP (“PMFF”), a Delaware limited partnership.

3. **Victor E. Cilli (“Cilli”)** is a New Jersey resident and since September 2006 has been registered with the Commission as an Associated Person (“AP”) of PIF. Cilli is more than a 10% owner, the sole principal of PIF and had sole trading authority for PMFF.

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4. On June 15, 2011, the Commission filed a federal civil injunctive action (“Complaint”) in federal district court against Cilli and PIF and (collectively “Defendants”). *CFTC v. Cilli*, Case No. 2:11-CV-03445 WJM (D.N.J.).

5. On October 3, 2011, the United States District Court for the District of New Jersey convicted Cilli of, *inter alia*, criminal securities fraud and misappropriation in violation of 15 U.S.C. §§ 78j(b) and 78ff(a), 17 C.F.R. § 240-10b-5, and 18 U.S.C. § 2 (securities fraud) in connection with the operation of the PMFF commodity pool. *United States v. Cilli*, Crim. No. 11-660 (AET) (D.N.J.). Cilli’s conviction for securities fraud was based on the same facts charged in *CFTC v. Cilli, et al.* Cilli was convicted, in relevant part, of:

- engaging in 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 and failing to disclose this information to the pool participants, according to his conviction;
- sending some of the pool participants false statements showing profits when, in fact, the pool lost money; and
- misappropriating thousands of dollars to pay for personal expenses.

On June 18, 2012, the district court sentenced Cilli to 36 months in prison and ordered to pay \$243,000 in restitution.

6. On May 29, 2012, the district court in *CFTC v. Cilli, et al.* entered a Consent Order of Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief (hereinafter the “Consent Order”) and found, in relevant part, that Cilli and PIF engaged in fraud by misrepresentations and omissions of material facts by knowingly and willfully sending pool

participants statements that falsely stated that PMFF had made money when, in fact, the pool had lost money trading, by omitting that Cilli had only traded a portion of the pool's funds, and by misappropriating pool funds for personal expenses. The Consent Order found, in relevant part, that Cilli and PIF violated Section 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii) (2006), for conduct before June 18, 2008, and Section 4b(a)(1)(A)-(C) of the Act, to be codified at 7 U.S.C. § 6b(a)(1)(A)-(C), for conduct on or after June 18, 2008, and Section 4g(1)(A)-(C) of the Act, 7 U.S.C. § 6g(1)(A)-(C).

7. The Consent Order permanently restrains, enjoins and prohibits Cilli and PIF, *inter alia*, from directly or indirectly:

- a. cheating, defrauding or willfully deceiving, or attempting to cheat, defraud, or willfully deceive any other person in or in connection with any order to make, or the making of any contract of sale of any commodity for future delivery, made or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person in violation of Section 4b(a)(1)(A) and (C) of the Act, as amended, to be codified at 7 U.S.C. §6b(a)(1)(A) and (C);
- b. willfully making or causing to be made to any other person any false report or statement, or willfully entering or causing to be entered for such other person any false record, in or in connection with any order to make, or the making of any contract of sale of any commodity for future delivery, made or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person in violation of Section 4b(a)(1)(B) of the Act, to be codified at 7 U.S.C. §6b(a)(1)(B); and

c. 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 by use of the mails or any means or instrumentality of interstate commerce, while registered or acting as a CPO or an AP of a CPO in violation of Section 4o(1)(A) and (B) of the Act, as amended, 7 U.S.C. §6o(1)(A) and (B).

8. Pursuant to Section 8a(2)(C) of the Act, 7 U.S.C. § 12a(2)(C), the Commission may revoke the registration of any person who has been permanently enjoined by order of a court of competent jurisdiction, from certain enumerated activities, including but not limited to, engaging in or continuing any activity involving fraud or any transaction in or advice concerning contracts of sale of a commodity for future delivery.

9. Pursuant to Section 8a(2)(D) of the Act, 7 U.S.C. § 12a(2)(D), the Commission may revoke the registration of any person who has been convicted within ten years preceding the filing of the application for registration or at any time thereafter of any felony that, among other things, (i) involves any transactions or advice concerning any contract of sale of a commodity for future delivery; (ii) arises out of the conduct of the business of a commodity trading advisor or commodity pool operator, or (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling.

10. Furthermore, pursuant to Section 8a(2)(E) of the Act, 7 U.S.C. § 12a(2)(E), the Commission may revoke the registration of any person who has been found, in a proceeding

brought by the Commission, to have violated the Act by committing fraud or misappropriation within ten years preceding the filing of the registration application or any time thereafter.

11. Furthermore, pursuant to Section 8a(2)(H) of the Act, 7 U.S.C. § 12a(2)(H), the Commission may revoke the registration of any person if revocation of the registration of any principal of such person is warranted pursuant to Section 8a(2) of the Act, 7 U.S.C. § 12a(2). Section 8a(2)(H) of the Act further provides that “principal” includes a general partner or a partnership, or a person who owns more than 10% of the voting shares of a corporation. Pursuant to Regulation 3.1(a)(1), 17 C.F.R. § 3.1(a)(1) (2012), if an entity is organized as a limited liability company, “principal” includes any direct, president, chief executive officer, manager, managing member or members vested with the management authority for the entity, and any person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the entity’s activities that are subject to regulation by the Commission.

12. The facts set forth above constitute a valid basis for the Commission to revoke PIF’s registration as a CPO and Cilli’s registration as an AP.

II.

13. Pursuant to Regulation 3.60(a), 17 C.F.R. § 3.60(a) (2012), Cilli and PIF are hereby notified that a public proceeding shall be conducted on the following questions:

- a. Whether Cilli and PIF are subject to statutory disqualification from registration under Section 8a(2)(C), (D), (E) and (H) of the Act as set forth in Section I above;

- b. If the answer to question “a” above is affirmative, then whether the registration of PIF as a CPO and the registration of Cilli as an AP should be revoked.

14. Such proceeding shall be held before an Administrative Law Judge or a Presiding Officer in accordance with Regulations 3.60 and 10.8, 17 C.F.R. §§ 3.60 and 10.8 (2012), and all post-hearing procedures shall be conducted pursuant to Regulations 3.60(i)-(j), 17 C.F.R. § 3.60(i)-(j) (2012).

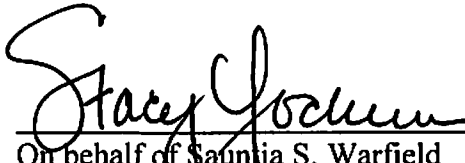
15. In accordance with the provisions of Regulation 3.60(a)(3), 17 C.F.R. § 3.60(a)(3) (2012), Cilli and PIF are entitled to file responses challenging the evidentiary basis of the statutory disqualification or show cause why, notwithstanding the accuracy of the allegations, their registrations should not be suspended, revoked, or restricted. Such responses must be filed with the Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and served upon W. Derek Shakabpa, Division of Enforcement, Eastern Regional Office, 140 Broadway, 19th Floor, New York, NY 10005, within thirty (30) days after the date of service of this Notice upon Cilli and PIF, in accordance with the provisions of Regulation 3.60(b), 17 C.F.R. § 3.60(b) (2012). If Cilli and PIF fail to file a timely response to this Notice, the allegations set forth herein shall be deemed to be true, and the Administrative Law Judge or the Presiding Officer may issue an Order of Default in accordance with the provisions of Regulation 3.60(g), 17 C.F.R. § 3.60(g) (2012).

III.

16. The Proceedings Clerk shall serve this Notice of Intent to Revoke the Registrations of Victor E. Cilli and Progressive Investment Funds LLC in accordance with

Regulation 3.50, 17 C.F.R. § 3.50 (2012), or by any other means permitted under the Act or Regulations.

By the Commission.


On behalf of Sauntia S. Warfield
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 21, 2012