

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:)
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**CURTIS DALTON (d/b/a
BINARY INTERNATIONAL),

Respondent.**

CFTC Docket No. 19-17

RECEIVED CFTC



Office of Proceedings
Proceedings Clerk

9:46 am, Jul 29, 2019

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS AND IMPOSING REMEDIAL SANCTIONS**

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from in or about October 2013 to in or about May 2016 (the “Relevant Period”), Curtis Dalton, doing business as Binary International (“Dalton” or “Respondent”), violated Sections 2(c)(2)(B)(iv)(I)(aa), 2(e), 4c(b), and 4d(a)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 2(c)(2)(B)(iv)(I)(aa), 2(e), 6c(b), 6d(a)(1) (2012), and Commission Regulations 5.3(a)(4)(i)(B), 32.2, and 33.3, 17 C.F.R. §§ 5.3(a)(4)(i)(B), 32.2, 33.3 (2018). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledge service of this Order.¹

¹ Respondent consents to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondent does not consent to the use of the Offer, or the

III.

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Dalton violated Sections 2(c)(2)(B)(iv)(I)(aa), 2(e), 4c(b), and 4d(a)(1) of the Act, 7 U.S.C. §§ 2(c)(2)(B)(iv)(I)(aa), 2(e), 6c(b), 6d(a)(1) (2012), and Regulations 5.3(a)(4)(i)(B), 32.2, and 33.3, 17 C.F.R. §§ 5.3(a)(4)(i)(B), 32.2, 33.3 (2018), by offering to enter into, entering into, and confirming the execution of illegal off-exchange retail commodity transactions—specifically, binary options—for U.S. and overseas customers while failing to be registered as required. During the Relevant Period, Dalton’s business took in at least \$1.5 million from Binary International customers for the purpose of trading binary options.

B. RESPONDENT

Curtis Dalton is a resident of Middleton, Massachusetts. Dalton was previously registered with the Commission as an Associated Person of Morgan Stanley & Company LLC from July 2008 to June 2009, and as an Associated Person of Morgan Stanley Smith Barney LLC from June 2009 to October 2009. Dalton is not currently registered with the Commission in any capacity.

C. FACTS

During the Relevant Period, Dalton, doing business as Binary International, solicited, accepted, and executed orders for binary options trading involving foreign currencies for both U.S. and overseas individuals. Dalton did business pursuant to an agreement with a British Virgin Islands company located in Cyprus. This BVI company operated a web-based and mobile application binary options trading platform, management and monitoring systems, and various other features to facilitate the operation of a binary options trading website. Under the agreement with the BVI company, Dalton obtained a non-exclusive license to use and operate the BVI company’s products and services under the name Binary International. In exchange, Dalton paid the BVI company twenty percent (20%) of Binary International’s revenues.

Dalton solicited customers through the Binary International website (www.binaryinternational.com), email, and by telephone. Customers opened their accounts by completing an online application on Binary International’s website and transferring money by credit card or wire transfer to a bank account in Curacao controlled by Dalton. Once customers opened and funded their accounts, they could begin to make trades. Most, if not all, of Binary International’s customers were not eligible contract participants (“ECP”) as defined by Section 1a(18) of the Act, 7 U.S.C. § 1a(18) (2012). Nor was Dalton himself an ECP.

findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

Customers who made trades through Binary International bought or sold “call” or “put” options that allowed them to make predictive trades on whether the price of a certain foreign currency would go “up” or “down” at a future date and/or time. Customers could set expiry times on their options such as thirty (30) seconds, sixty (60) seconds, five minutes, or fifteen minutes. At the expiry of the option, if the customer had correctly predicted the price movement of the foreign currency the customer would receive a credit to his or her account; if the customer had incorrectly predicted the price movement of the foreign currency, he or she would lose the full amount paid for the option. During the Relevant Period, Dalton’s business took in at least \$1.5 million from Binary International customers for the purpose of trading binary options.

In an agreement dated June 1, 2016, Dalton sold the business and assets of Binary International to a limited liability company formed in Mauritius in April 2016.

IV.

LEGAL DISCUSSION

A. **Dalton, Doing Business as Binary International, Offered Unlawful Off-Exchange Options Trading in Violation of Section 4c(b) of the Act, and Regulations 32.2 and 33.3**

Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), makes it unlawful to offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under the Act which is of the character of, or is commonly known to the trade as, an “option,” “privilege,” “indemnity,” “bid,” “offer,” “put,” “call,” “advance guaranty,” or “decline guaranty,” contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.

Regulation 32.2, 17 C.F.R. § 32.2 (2018), in relevant part, makes it unlawful for any person to offer to enter into, enter into, confirm the execution of, maintain a position in, or otherwise conduct activity related to any transaction in interstate commerce that is a commodity option transaction, unless such transaction is conducted in compliance with and subject to the provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap.

Regulation 33.3, 17 C.F.R. § 33.3 (2018), in relevant part, makes it unlawful for any person to offer to enter into, enter into, confirm the execution of, or maintain a position in, any commodity option transaction unless the option involved is traded on or subject to the rules of a designated contract market.

Dalton offered to enter into and entered into binary option transactions with U.S. customers, and confirmed the execution of those binary options. These transactions were not conducted on a designated contract market, an exempt board of trade, or a bona fide foreign

board of trade.² Therefore, Dalton violated Section 4c(b) of the Act and Regulations 32.2 and 33.3.

B. Dalton, Doing Business as Binary International, Engaged in Unlawful Off-Exchange Swaps Trading in Violation of Section 2(e) of the Act

Under Section 1a(47)(A)(i) of the Act, 7 U.S.C. § 1a(47)(i) (2012), options, unless excluded by Section 1a(47)(B) of the Act, are also considered to be swaps. None of the exclusions in Section 1a(47)(B) of the Act apply here. Section 2(e) of the Act, 7 U.S.C. § 2(e) (2012), makes it unlawful for any person, other than an ECP, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market.

Dalton entered into swaps in the form of binary option transactions with U.S. customers. Neither Dalton nor his customers were ECPs. The transactions by Binary International customers were not entered into on or subject to the rules of a board of trade designated as a contract market. Therefore, Dalton violated Section 2(e) of the Act.

C. Dalton, Doing Business as Binary International, Operated as an Unregistered Futures Commission Merchant in Violation of Sections 2(c)(2)(B) and 4d(a)(1) of the Act, and Regulation 5.3

Section 1a(28) of the Act, 7 U.S.C. § 1a(28) (2012), in relevant part, defines a futures commission merchant (“FCM”) as any individual, association, partnership, corporation or trust that engages in soliciting or in accepting orders for swaps and commodity options, and accepts money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

Section 2(c)(2)(B)(iv)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2)(B)(iv)(I)(aa) (2012), in pertinent part, makes it unlawful for any entity to solicit or accept orders from non-ECPs in connection with agreements, contracts, or transactions involving foreign currency options unless such entity is registered as an FCM. Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2012), in pertinent part, makes it unlawful for any person to operate as an FCM unless such person is registered with the Commission as an FCM and such registration shall not have expired nor have been suspended nor revoked. Regulation 5.3(a)(4)(i)(B), 17 C.F.R. § 5.3(a)(4)(i)(B) (2018), requires that all FCMs that solicit or accept orders from any non-ECPs in connection with any retail forex transaction must be registered.

Dalton, while not registered as an FCM, solicited and accepted orders for binary options on foreign currencies from U.S. non-ECP customers for the purpose of margining, guaranteeing, or securing binary options trades or contracts resulting from such orders. Therefore, Dalton violated Sections 2(c)(2)(B)(iv)(I)(aa) and 4d(a)(1) of the Act and Regulation 5.3(a)(4)(i)(B).

² Regulation 32.3, which exempts trade options from the requirements of Section 4c(b), is inapplicable to this matter.

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Dalton, doing business as Binary International, violated Sections 2(c)(2)(B)(iv)(I)(aa), 2(e), 4c(b), and 4d(a)(1) of the Act, 7 U.S.C. §§ 2(c)(2)(B)(iv)(I)(aa), 2(e), 6c(b), 6d(a)(1) (2012), and Regulations 5.3(a)(4)(i)(B), 32.2, and 33.3, 17 C.F.R. §§ 5.3(a)(4)(i)(B), 32.2, 33.3 (2018).

VI.

OFFER OF SETTLEMENT

Respondent has submitted the Offer in which he, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 - 1. The filing and service of a complaint and notice of hearing;
 - 2. A hearing;
 - 3. All post-hearing procedures;
 - 4. Judicial review by any court;
 - 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 - 6. Any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. pt. 148 (2018), relating to, or arising from, this proceeding;
 - 7. Any and all claims that he 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 proceeding; and
 - 8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;

- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
 - 1. Makes findings by the Commission that Respondent violated Sections 2(c)(2)(B)(iv)(I)(aa), 2(e), 4c(b), and 4d(a)(1) of the Act, 7 U.S.C. §§ 2(c)(2)(B)(iv)(I)(aa), 2(e), 6c(b), 6d(a)(1) (2012), and Regulations 5.3(a)(4)(i)(B), 32.2, and 33.3, 17 C.F.R. §§ 5.3(a)(4)(i)(B), 32.2, 33.3 (2018);
 - 2. Orders Respondent to cease and desist from violating Sections 2(c)(2)(B)(iv)(I)(aa), 2(e), 4c(b), and 4d(a)(1) of the Act and Regulations 5.3(a)(4)(i)(B), 32.2, and 33.3;
 - 3. Orders Respondent to pay a civil monetary penalty of \$200,000, plus post-judgment interest, within ten (10) days of the date of entry of this Order;
 - 4. Orders Respondent to comply with the conditions and undertakings consented to in the Offer and set forth below in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Sections 2(c)(2)(B)(iv)(I)(aa), 2(e), 4c(b), and 4d(a)(1) of the Act, 7 U.S.C. §§ 2(c)(2)(B)(iv)(I)(aa), 2(e), 6c(b), 6d(a)(1) (2012), and Regulations 5.3(a)(4)(i)(B), 32.2, and 33.3, 17 C.F.R. §§ 5.3(a)(4)(i)(B), 32.2, 33.3 (2018).
- B. Respondent shall pay a civil monetary penalty in the amount of \$200,000 (the "CMP Obligation"), plus post-judgment interest, within ten (10) days of the date of entry of this Order. If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012). Respondent shall pay the 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:

Commodity Futures Trading Commission
Division of Enforcement
MMAC/ESC/AMK326

Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

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

- C. Respondent shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent 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 findings or conclusions in the Order or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent 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.
 2. Respondent agrees that he shall never, directly or indirectly:
 - a. control or direct 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" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2018));
 - b. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;
 - c. apply for registration or claim exemption from registration with the Commission in any capacity, and engage 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) (2018); and/or

- d. act 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, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9).
3. Cooperation with the Commission: Respondent 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. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action. As part of such cooperation, Respondent agrees to:
 - a. preserve and produce to the Commission in a responsive and prompt manner, as requested by Division Staff, all non-privileged documents, information, and other materials wherever located, including but not limited to audio files, electronic communications, and trading records and data, in the possession, custody, or control of Respondent;
 - b. comply fully, promptly, completely and truthfully, subject to any legally recognized privilege, with any inquiries or requests for information and documents by the Commission;
 - c. identify and authenticate relevant documents and other evidentiary materials, execute affidavits or declarations, and testify completely and truthfully at depositions, trial, and other judicial proceedings, when requested to do so by the Division Staff; and
 - d. subject to applicable laws and regulations, use his best efforts to assist in locating and contacting any current or former officer, director, employee, contractor, or agent of any entity foreign or domestic associated with the operation of Binary International and/or its successors.
4. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
5. Change of Address/Phone: Until such time as Respondent satisfies in full his CMP Obligation as set forth in this Order, Respondent 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.

The provisions of this Order shall be effective as of this date.

By the Commission.



Robert N. Sidman
Deputy Secretary of the Commission
Commodity Futures Trading Commission

Dated: July 29, 2019