

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

**COMMODITY FUTURES TRADING
COMMISSION,**

Plaintiff,

v.

JARED J. DAVIS,

Defendant.

Case No. 3:19-cv-2140

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AND FOR
CIVIL MONETARY PENALTIES**

Plaintiff, Commodity Futures Trading Commission (“CFTC” or “Commission”), by its attorneys, alleges as follows:

I. SUMMARY

1. From at least July 2012 through at least June 2016 (the “Relevant Period”), Jared J. Davis (“Davis” or “Defendant”), operating through multiple private entities and using various trade names, fraudulently solicited and accepted at least \$10 million from customers in the United States and elsewhere to trade off-exchange binary options on commodities, foreign currencies, individual stocks, and stock indices.

2. Davis created, operated, and controlled a number of domestic and foreign business entities and internet websites to facilitate his binary options scheme. This binary options enterprise, referred to hereinafter as the “Enterprise,” was at all times primarily managed by Davis.

3. Davis, directly or indirectly through the Enterprise, solicited prospective customers to trade off-exchange binary options through internet marketing campaigns, through one or more of the Enterprise's websites, and through e-mail and telephone communications.

4. Davis, directly or indirectly through the Enterprise, defrauded customers by making misrepresentations and omissions of material facts to attract and to retain customers to enter into off-exchange binary options, including but not limited to, misrepresenting and failing to disclose that Davis effectively took the opposing position on each trade and therefore made money when customers lost money on trades.

5. By virtue of this conduct, and as more fully set forth below, Davis has engaged, is engaging, and/or is about to engage in acts and practices in violation of Section 4c(b) of the Commodity Exchange Act (the "Act"), 7 U.S.C. 6c(b) (2012), and Commission Regulation ("Regulation") 32.4, 17 C.F.R. § 32.4 (2019).

6. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), the CFTC brings this action to enjoin Defendant's unlawful acts and practices, to compel his compliance with the Act and Regulations thereunder, and to enjoin him from engaging in any commodity related activity, as set forth below. In addition, the CFTC seeks civil monetary penalties for each violation of the Act, and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

7. Unless restrained and enjoined by this Court, Davis is likely to continue to engage in the acts and practices alleged in this Complaint, or in similar acts and practices, as described more fully below.

II. JURISDICTION AND VENUE

8. 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). In addition, Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), provides that U.S. district courts possess jurisdiction to hear actions brought by the CFTC for injunctive relief or to enforce compliance with the Act whenever it shall appear that such 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.

9. Venue properly lies in this District pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because Davis transacted business in and committed acts and practices in violation of the Act and Regulations within this District, among other places.

III. PARTIES

10. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act and the Regulations promulgated thereunder. The CFTC maintains its principal office at 1155 21st Street N.W., Washington, D.C. 20581.

11. Defendant **Jared J. Davis** is last known to be a resident of Sandusky, Ohio. Davis directly or indirectly owned various businesses and internet websites that offered binary options trading to customers, and Davis served as the primary manager of the overall Enterprise. Davis has never been registered with the CFTC in any capacity.

IV. STATUTORY BACKGROUND

A. Commission Jurisdiction Regarding Off-Exchange Options Trading

12. Through Section 4c(b) of the Act, 7 U.S.C § 6c(b) (2012), Congress has given the CFTC jurisdiction and plenary rulemaking authority over all commodity option transactions.

13. Binary options are “options,” as defined by Section 1a(36) of the Act, 7 U.S.C. § 1a(36) (2012), and binary options on commodity futures and “commodities,” as defined by Section 1a(9) or (19) of the Act, 7 U.S.C. § 1a(9), (19) (2012), are commodity option transactions pursuant to Section 4c(b) of the Act, 7 U.S.C § 6c(b) (2012), and Regulation 32.2, 17 C.F.R. § 32.2 (2019).

14. 7 U.S.C. § 6c(b) makes it unlawful for any person 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 as, *inter alia*, an “option,” “bid,” “offer,” “put,” or “call,” contrary to any rule, regulation, or order of the CFTC prohibiting any such transaction or allowing any such transaction under such terms and conditions as the CFTC shall prescribe.

15. Section 2(c)(2)(B)(i)(I) and (II), 7 U.S.C. § 2(c)(2)(B)(i)(I), (II) (2012), provides in relevant part that the Act applies to, and the CFTC shall have jurisdiction over, an

agreement, contract or transaction in foreign currency (“forex”) that is an option and is offered to, or entered into with, a person that is not an eligible contract participant (“ECP”), unless the counterparty, or the person offering to be the counterparty, of the person is one of the enumerated exceptions not applicable here.

16. An ECP is defined by 7 U.S.C. § 1a(18)(A)(xi), in relevant part, as an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$10,000,000, or \$5,000,000 and who enters into the agreement, contract or transaction to manage the risk associated with an asset owned or a liability incurred, or reasonably likely to be owned or incurred, by the individual.

B. Prohibition Against Fraud

17. The Act and Regulations contain numerous anti-fraud provisions applicable to various categories of entities or transactions. Regulation 32.4, 17 C.F.R. § 32.4 (2019), promulgated under 7 U.S.C. § 6c(b), provides that:

In or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction, it shall be unlawful for any person, directly or indirectly:

- (a) To cheat or defraud or attempt to cheat or defraud any person;
- (b) To make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; or
- (c) To deceive or attempt to deceive any other person by any means whatsoever.

C. Controlling Person Liability

18. Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), provides in relevant part that any person who, directly or indirectly, controls any person who has violated any provision of the Act or any of the rules, regulations, or orders issued pursuant to the Act may

be held liable for such violation in any action brought by the Commission, if such person did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation.

V. FACTS

A. Binary Options Generally

19. A binary option is a type of options contract in which the payout depends entirely on the outcome of a discrete event—usually a “yes/no” proposition. The “yes/no” proposition typically relates to whether the price of a particular asset (*e.g.*, a commodity, a foreign currency, or an individual stock) will rise above or fall below a specified amount on a specified date and time. For example, the “yes/no” proposition might be whether the price of silver will be higher than \$15.26 per ounce at 11:17 am on a particular day, or if the exchange rate between the U.S. Dollar and the Euro will be above \$1.18 at 2:15 pm on a given day.

20. Once the option holder acquires a binary option through payment of a premium, there is typically no further decision for the investor to make regarding the exercise of the binary option because binary option contracts expire automatically.

21. 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 typically receives a pre-determined amount of money if he or she made a correct prediction. If the investor made an incorrect prediction, he or she gets nothing and loses the premium paid.

B. The Unregistered Binary Options Industry

22. The unregistered binary options industry is often comprised of three main components, sometimes referred to as “trading platforms,” “brands,” and “affiliate marketers.”

1. Trading Platforms

23. Trading platforms offer services for a fee that brands (discussed below) purchase or license and use to accept orders and execute binary option trades with customers. Trading platforms may offer software related to (a) trade entry and execution services; (b) customer account and client relationship management services; (c) access to investment products (*i.e.*, various binary option contracts); and (d) back-office information technology support.

24. Some platforms, including ones used by Davis including SpotOption and Hello Binary, offer their brand customers access to software protocols, sometimes referred to as “risk management.” “Risk management” protocols, applied at the platform level to investor accounts, allow a brand operator like Davis to manipulate the trading software to distort binary options prices and payouts, thereby determining whether customers lose or make money trading binary options.

25. For example, a brand operator may request that a platform manipulate the starting prices of a trade and increase the chances of an investment loss for customers with a history of trading success. Similarly, a brand operator may request that a platform increase the chances of an investment win for discouraged customers in order to induce them to keep trading and/or to deposit additional funds into their binary options trading account.

2. Brands

26. Brands, also known in the unregistered binary options industry as “private labels,” “white labels,” or “brokers,” may be established with a relatively modest investment and typically operate under a trade name while contracting with a platform for trading, customer account, back-office systems, and services.

27. Generally, brand operators, such as Davis, possess custody of customer funds and are the counterparty to each customer’s binary options transaction. Brands make money by being the counterparty to losing customer trades and retaining the premiums paid by losing customers. In other words, binary option brands have an interest in having their customers lose money through binary options trading.

28. In order for brands to maintain their fraudulent binary options scheme and cover their expenses, they need to ensure that they have an active customer base losing money to the brands via losing trades, and that there is a constant stream of new customers to replace those who have either lost all of their investment or who have closed their account.

3. Affiliate Marketers

29. Affiliate marketers are independent entities who produce and disseminate marketing and promotional materials on internet websites and via email solicitations touting exaggerated profits that can be obtained through binary options trading.

30. Affiliate marketers either work directly with brands or they use brand intermediaries to direct prospective customers and customers from their marketing campaigns to the brand website. Affiliate marketers, including those hired by Davis,

frequently employ materially false or misleading statements to induce prospective customers to open an account and trade binary options through a specific brand.

C. Davis's Binary Options Business

31. During the Relevant Period, Davis, directly or indirectly through the Enterprise, using various trade names and websites, solicited customers for the fraudulent offer and sale of binary options through internet marketing campaigns, one or more of the Enterprise's websites, and call centers located in Sandusky, Ohio, and later located in Costa Rica and Sint Maarten.

32. During or before July 2012, Davis established his first binary options brand, Option Mint (www.optionmint.com) by forming various shell companies with foreign bank accounts, among other things.

33. Over the next few years, Davis established three additional brands—Option King (www.optionking.com), Option Queen (www.optionqueen.com), and Option Prince (www.optionprince.com)—by forming additional shell companies with foreign bank accounts, among other things.

34. Throughout the Relevant Period, Davis, directly or indirectly through the Enterprise, solicited customers located throughout the United States and around the world to trade binary option contracts, including binary option contracts based on commodities and foreign currencies, through internet websites, e-mails, and telephone communications.

35. During the Relevant Period, the Enterprise accepted at least \$10 million from customers for the purpose of trading binary options, of which Davis obtained a portion thereof. The Enterprise instructed customers to fund their trading accounts either with wire

transfers to bank accounts that Davis controlled or through credit card or PayPal charges to accounts that Davis also controlled.

36. During the Relevant Period, Davis, directly or indirectly through the Enterprise, offered or entered into binary option trades that were agreements, contracts, or transactions in foreign currency, to or with persons who were not ECPs, and Davis was not an enumerated counterparty as defined by Section 2(c)(2)(B)(i)(II)(aa)-(ff), 7 U.S.C. § 2(c)(2)(B)(i)(II)(aa)-(ff) (2012).

D. Davis' Fraud in Connection with Off-Exchange Binary Options

37. During the Relevant Period, Davis, directly or indirectly through the Enterprise, engaged in an off-exchange binary options trading scam and falsely claimed in his solicitations that customers would generate significant profits through binary options trading, with winning trades offering a payout of up to 85%.

38. Davis, directly or indirectly through the Enterprise, defrauded customers by making misrepresentations of material facts to attract and retain customers to enter into illegal, off-exchange binary options transactions, including by misrepresenting that:

- a. Customer funds were maintained in individual trading accounts, when in reality the funds were commingled with the general funds of the Enterprise;
- b. Enterprise employees were “brokers” or “market analysts” who possessed specialized knowledge and financial expertise necessary to recommend profitable binary options trades, when in reality Davis and his employees had no relevant experience or qualifications;

- c. Customers could make “risk free” or “guaranteed” binary options trades if they deposited more money, when in reality customers were often placed in losing trades; and
- d. Customers could withdraw money from their binary options accounts at any time, when in reality customers were often not permitted to withdraw funds even after complying with Enterprise requests for additional burdensome paperwork and/or funds.

39. Davis, directly or indirectly through the Enterprise, defrauded customers by making omissions of material facts to attract and retain customers to enter into off-exchange binary options transactions, including by failing to disclose that:

- a. Davis did not connect customers to a legitimate binary options exchange that matched customers who chose different binary option outcomes;
- b. Davis effectively took the opposite position on each trade and thus made money for the Enterprise and himself every time a customer lost money;
- c. Davis could and oftentimes did instruct, and directed Enterprise employees to instruct, the trading platforms to manipulate internal software settings via “risk management” protocols to make it more likely for certain customers to win or lose; and
- d. Enterprise employees, at the direction of Davis, provided fictitious trading results to customers in an effort to induce them to deposit additional funds and “burned” certain customer accounts through excessive trading.

40. Davis, directly or indirectly through the Enterprise, communicated with SpotOption to use “risk management” as a way of increasing individual customer losses. For example:

- a. On or about June 2, 2014, an employee for Davis wrote an email to “Risk Management <risk@spotoption.com>,” that referred to “optionmint 16312,” a specific OptionMint customer. Defendant wrote: “He is burying us. Please do something with him.”
- b. On or about February 19, 2014, an employee for Defendant wrote an email to “Risk Management <risk@spotoption>,” stating “[p]lease look at user #15747 . . . He’s taking out positions for random amounts and is killing us.” The employee copied Davis to this email using Defendant’s “jared@davisinvestment.com” account.
- c. On or about February 25, 2014, an employee for Davis wrote an email to “Risk Management <risk@spotoption.com>,” stating “[p]lease adjust risk for following trader. He is crushing us.” The employee copied Davis to this email using Defendant’s “jared@davisinvestment.com” account.
- d. On or about April 9, 2014, an employee for Davis wrote an email to “Risk Management <risk@spotoption.com>,” stating “[c]an you please adjust risk for the below OptionMint user. He is crushing us with this straddle strategy.” The employee copied Davis to this email using Defendant’s “jared@davisinvestment.com” account.

- e. On or about April 10, 2014, an employee for Davis wrote an email to “Risk Management <risk@spotoption.com>,” as a follow up to his April 9, 2014 email. The employee asked, “[h]as this risk been changed yet. This was sent yesterday but no reply yet.” The employee copied Davis. A SpotOption employee replied the same day, copying Davis and stating “[t]hank you for contacting us. We had changed the status risk for the guy below. It should be more aggressive and reducing his profits in the soon [sic] future.”
- f. On or about April 21, 2014, an employee for Davis wrote an email to “Risk Management <risk@spotoption.com>,” stating “[t]his user is still crushing us even though the risk was adjusted 6 days ago. Can you please take another look immediately and fix this ASAP.” The employee copied Davis to this email. A SpotOption employee responded, copying Davis, and writing that the customer “lost 621\$ in the last 6 days . . . Eventually, we believe the changes will do the work.”
- g. On or about November 4, 2014, an employee for Davis wrote an email to “Risk Management <risk@spotoption.com>,” stating “[p]lease adjust risk for OptionMint user: [xxxxx]@gmail.com. Large trade amounts and at a 76% win rate.” The employee copied Defendant to this email using Davis’s “jared@davisinvestment.com” account.

41. Davis, directly or indirectly through the Enterprise, also defrauded customers who requested withdrawals from their accounts by falsely representing that their accounts had been reassigned to other brokers, that they had not made enough trades to withdraw their

money, and/or that their money was tied up in pending trades which they eventually lost. Further, Davis falsely induced certain customers to send additional funds to cover purported fees and taxes in order to return their funds.

42. Ultimately, although Davis occasionally allowed customers to withdraw small amounts from their accounts, the majority of customers were unable to obtain any funds back from Davis or the Enterprise despite repeated demands.

VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND REGULATIONS

COUNT ONE

Commodity Options Fraud
Violations of Section 4c(b) of the Act and Regulation 32.4

43. The allegations set forth in the preceding paragraphs are re-alleged and incorporated herein by reference.

44. During the Relevant Period, Davis, in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction, directly or indirectly: (a) cheated or defrauded, or attempted to cheat or defraud, customers and prospective customers; (b) made or caused to be made to customers and prospective customers false reports or statements; and (c) deceived or attempted to deceive customers and prospective customers, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), and Regulation 32.4, 17 C.F.R. § 32.4 (2019).

45. During the Relevant Period, Davis was a controlling person of the Enterprise and, through the conduct set forth in paragraphs 19-42, failed to act in good faith, or knowingly induced, directly or indirectly, the acts constituting the violations. Accordingly,

Davis is liable for each and every violation of the Act committed by employees or agents of the Enterprise pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).

46. Each act by Davis or by any employee or agent of the Enterprise in violation of 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4.

VII. RELIEF REQUESTED

WHEREFORE, the CFTC respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), and pursuant to its own equitable powers, enter:

A. An order finding that Defendant violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), and Regulation 32.4, 17 C.F.R. § 32.4 (2019);

B. An order of permanent injunction enjoining Defendant, and his affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons in active concert with him, who receive actual notice of such order by personal service or otherwise, from engaging in the conduct described above, in violation of 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4;

C. An order of permanent injunction prohibiting Defendant, and any of his agents, servants, employees, successors, assigns, attorneys, and all persons in active concert with Defendant, from directly or indirectly:

(1) 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));

- (2) Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2019)), for accounts held in the name of Defendant or for accounts in which Defendant has a direct or indirect interest;
 - (3) Having any commodity interests traded on Defendant’s behalf;
 - (4) 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;
 - (5) Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
 - (6) Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2019); and
 - (7) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2019)), agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the CFTC except as provided for in 17 C.F.R. § 4.14(a)(9);
- D. An order directing Defendant, as well as any third-party transferee and/or successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues, and trading profits derived, directly or indirectly, from acts or practices which constitute

violations of the Act and Regulations as described herein, including pre-judgment and post-judgment interest;

E. An order requiring Defendant, as well as any successors thereof, to make full restitution to every person who has sustained losses proximately caused by the violations described herein, including pre-judgment and post-judgment interest;

F. An order directing Defendant, as well as any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between, with, or among Defendant, and any customer whose funds were received by Defendant as a result of the acts and practices that constituted violations of the Act and Regulations, as described herein;

G. An order directing Defendant, as well as any successors thereof, to pay a civil monetary penalty assessed by the Court, in an amount not to exceed the penalty described by Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1) (2012), as adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, Pub. L. 114-74, tit. VII, § 701, 129 Stat. 584, 599-600, *see* Regulation 143.8, 17 C.F.R. § 143.8 (2019), for each violation of the Act and Regulations, as described herein;

H. An order requiring Defendant to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2413(a)(2) (2012); and

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I. Such other and further relief as the Court may deem necessary and appropriate under the circumstances.

Dated: September 17, 2019

Respectfully submitted,

COMMODITY FUTURES TRADING
COMMISSION

/s/ Peter M. Haas

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