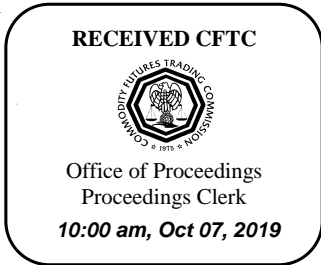


**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**



\_\_\_\_\_ )  
**In the Matter of:** )

**DAVID SECHOVICZ,** )

**Respondent.** )

) **CFTC Docket No. 20-01**  
)  
)

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

**I. INTRODUCTION**

The Commodity Futures Trading Commission (“Commission” or “CFTC”) has reason to believe that David Sechovicz (“Sechovicz” or “Respondent”), violated Sections 4c(b), 4o(1), and 6(c)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6c(b), 6o(1), 9(1) (2012), and Commission Regulations (“Regulations”) 4.41(a)(1)-(3) and (b)(1)-(2), 32.4, and 180.1(a)(1)-(3), 17 C.F.R. §§ 4.41(a)(1)-(3), (b)(1)-(2), 32.4, 180.1(a)(1)-(3) (2019). 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.

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 Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.<sup>1</sup>

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<sup>1</sup> Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

## II. FINDINGS

The Commission finds the following:

### A. SUMMARY

Between at least 2014 and December 2016 (“Relevant Period”), Sechovicz and his business partner (“Partner”) solicited prospective customers throughout the United States and abroad to open and fund off-exchange binary options trading accounts (“binary options account(s)”) at websites operated by unregistered third-party binary options brokers (“Broker(s)”) using emails, websites, promotional videos, advertorials, and social media. Sechovicz and Partner launched at least six binary options campaigns, and additionally promoted the campaigns of other affiliate marketers, during the Relevant Period in which they intentionally or recklessly disseminated solicitations containing numerous false and misleading material statements. Specifically, in mass-distributed emails, on websites, and in promotional videos, advertorials, and social media, Sechovicz and Partner offered prospective investors access to “free” automated trading software that would purportedly trade the investors’ binary options accounts on their behalf. False and misleading material statements contained in their solicitations included: (1) claims that investors were guaranteed to make significant profits if they opened and funded binary options accounts at a recommended Broker; (2) the use of actors who pretended to be actual owners or users of automated trading software; and (3) depictions of investor bank or trading statements or “live” trading demonstrations showing profitable trading using automated trading software that were, in fact, fake.

Sechovicz and Partner intentionally or recklessly disregarded that the solicitations they used in their campaigns included false and misleading statements. They therefore committed fraud in violation of the Act and Regulations.

### B. RESPONDENT

**David Sechovicz** is a resident of Puerto Rico. Sechovicz has never registered with the Commission in any capacity.

### C. FACTS

Between at least 2014 and December 2016, Sechovicz and Partner worked as affiliate marketers. Affiliate marketing is a form of performance-based marketing that is predominantly conducted via email solicitations and promotional materials made available on internet websites. An affiliate marketing campaign is a promotion of a product or service designed to convince the audience to take a specific action, including purchasing a product or service or opening and funding a binary options trading account. Affiliate marketing is referred to as a campaign or funnel because the marketing is designed to funnel (or “drive”) customers to the service provider or product owner. Affiliate marketing occurs in various business segments, including binary options.<sup>2</sup>

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<sup>2</sup> A binary option is a type of option 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

Affiliate marketing in binary options generally involves the creation and bulk dissemination of solicitation materials designed to entice recipients to click an embedded electronic link that routes the user to a binary options campaign website. The websites typically promote automated trading software—available for “free” upon opening and funding a binary options trading account at a Broker—that purports to trade successfully on behalf of prospective investors or otherwise promote the opening and funding of a binary options account at a Broker. Affiliate marketers in binary options, like Sechovicz, typically launch their campaigns by sending out mass email solicitations, and they earn a flat commission from Brokers for each investor that opens and funds a trading account as a result of their solicitations.

In addition to mass email solicitations, Sechovicz and Partner promoted their campaigns using social media and by paying various online subscription news services to publish their advertorials, which resembled news articles. Like the emails, the social media solicitations and advertorials were typically designed to entice recipients to click an embedded electronic link routing the user to a binary options campaign website.

Between at least 2014 and December 2016, Sechovicz and Partner created and disseminated false and misleading solicitations for six binary options affiliate marketing campaigns, including: (1) Automated Money Kit (2014); (2) Wall Street Millionaire (2014); (3) Click Click Money (2014); (4) Guaranteed Wealth (2015); (5) The Cash Code / Robert Allen System (2015); and (6) The Conservative Investor (2016). These campaigns were designed to lure prospective customers, primarily located in the United States, to open binary options trading accounts at one of more than thirty-five Brokers and make an initial deposit of funds to trade binary options using the automated trading software. These campaigns resulted in the dissemination of millions of false and misleading solicitations, which were viewed thousands of times by prospective investors in approximately 350,000 website visits. And they were successful: approximately 25,000 victims opened accounts with Brokers and funded those accounts with initial deposits, usually of \$250 or more. For their affiliate marketing work on these campaigns, Sechovicz and Partner generated profits of at least \$3.8 million.

Sechovicz’s work on these campaigns included monitoring the customer service email addresses associated with the campaigns and responding to investor emails; developing content and design for internet websites that supported the campaigns; registering campaign websites; and arranging for the bulk dissemination of solicitations. Partner’s work included identifying, soliciting, and/or negotiating with binary options Brokers regarding commissions and other matters; creating solicitation materials; obtaining, rebranding, and distributing automated trading software; performing accounting functions; and arranging for the bulk dissemination of solicitations, including through social media.

Sechovicz and Partner intentionally or recklessly made numerous false and misleading representations about profits and trading activity in the solicitation materials they disseminated in their campaigns, including mass-distributed emails, websites, promotional videos known in the affiliate marketing industry as video sales letters (“VSL”), advertorials, and in social media.

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price of a particular asset—such as a currency pairing or commodity future—will rise above or fall below a specified amount at a specified date and time.

For example, Sechovicz and Partner claimed in their Automated Money Kit campaign emails that it would take “Just 23 minutes to make profits” and invited email recipients to “Imagine \$164.99 ... \$760.90 ... even \$3,432.60 slamming into your account on a daily basis.” They prompted recipients of their Click Click Money campaign emails to “Take advantage of this unique money making strategy to bank at least \$800 a day.” The Cash Code / Robert Allen System campaign promised recipients that “This dead simple easy to use software has the ability to pull in up to \$70,000 per month for average investors with no experience.” None of these profit claims was supported by the trading results of actual investors or investors’ actual experience using automated trading software, and Sechovicz and Partner knew that investors could not be assured of guaranteed profits, let alone the fake outsized profits touted in their campaigns. In an advertorial they wrote and disseminated for The Cash Code / Robert Allen System campaign, Sechovicz and Partner told the story of “Robert Allen,” a “regular person with no investment experience” who parlayed his life savings of \$1,500 into \$2.7 million using The Cash Code, a system that had been tested for three years and patented and was now available to the public for free. In fact, Robert Allen did not exist, and The Cash Code had neither been tested nor patented.

Sechovicz and Partner knew their automated trading software had not been tested and did not work as marketed, as they did not test the software themselves and received numerous complaints from investors who lost money using the automated trading software. Some of the software that Sechovicz and Partner disseminated was not even the software marketed, as when they recycled software used with other campaigns. On one occasion, Sechovicz wrote to Partner, “Funny thing is the last two weeks no one has questioned why they are using ‘wall street millionaire’ software when they got the product from click click money!” On another occasion, when a potential investor noted that two different names had been used for software, Partner wrote to Sechovicz, “thank him for his eagle eye, and offer him our trading tool for free lol ;-).” And for a time while conducting their Wall Street Millionaire campaign, Sechovicz and Partner represented that the automated trading software they marketed existed, when in fact it did not.

Many of the promotional videos that Sechovicz and Partner used in their campaigns depicted fictitious testimonials from actors who claimed to be successful owners or users of automated trading software, and some of the videos featured fake account statements showing tens of thousands of dollars or more in profits, purportedly from binary options trading using automated trading software. None of these emails or videos disclosed that the persons or statements portrayed were fictitious.

Sechovicz and Partner also knew or recklessly disregarded that investors who deposit funds with Brokers for binary options trading generally lose their funds and are unlikely to make any profit, while Brokers profit from investor losses.

Additionally, Sechovicz and Partner downplayed the risks involved with trading binary options in their campaign materials. Some of their campaign materials included no disclaimers regarding risk, while others explicitly disclaimed any risk. For example, a “Guaranteed Wealth” email stated “YOU can NOT lose.. period.”

Finally, Sechovicz and Partner also engaged in what they referred to as “remarketing” by distributing other affiliate marketers’ false and misleading binary options marketing campaigns,

including using their own email mailing lists, for compensation. Sechovicz and Partner knew or recklessly disregarded that the campaigns they “remarketed” included false and misleading statements about profits and risk of loss.

### III. LEGAL DISCUSSION

#### A. Option Fraud in Violation of Section 4c(b) of the Act and Regulation 32.4

Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), 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 to the trade as,” inter alia, an “option,” “bid,” “offer,” “put,” or “call,” in contravention of Commission rules or regulations “prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.” Binary options qualify as commodity option transactions within the meaning of the Act and Regulations. *See CFTC v. Vision Fin. Partners, LLC*, Case No. 16-60297-CIV-Cohn/Seltzer, 2016 WL 3163071, at \*3 (S.D. Fla. June 3, 2016) (denying motion to dismiss; holding that binary options are commodity options within the meaning of Section 4c(b) of the Act).

Regulation 32.4, 17 C.F.R. § 32.4 (2019), provides that, 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 other 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.” Fraud involving commodity options is established when a person or entity: (A) makes a misrepresentation, misleading statement, or a deceptive omission; (B) acts with scienter; and (C) the misrepresentation or omission is material. *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1328 (11th Cir. 2002) (finding commercial that overemphasized profit potential, downplayed risk of loss, and urged viewers to take immediate action or risk missing the opportunity materially misleading, despite inclusion of boilerplate risk disclosures); *CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 446-47 (D.N.J. 2000) (holding that “the CFTC must demonstrate that the defendant made a material misrepresentation of presently existing or past fact with scienter” to establish a claim for futures and options fraud under Sections 4b(a) and 4c(b) of the Act.”); *CFTC v. Nat’l Invest. Consultants, Inc.*, No. C 05-02641, 2005 WL 2072105, at \*8 (N.D. Cal. Aug. 26, 2005) (Commission can establish scienter under Section 4b(a) of the Act by showing that a defendant “knew the representations were false and were calculated to cause harm or by showing that the representations were made with a reckless disregard for their truth or falsity.” (citing *CFTC v. Noble Wealth Data Information Services, Inc.*, 90 F. Supp. 2d 676, 686 (D. Md. 2000))).

For each of the six binary options campaigns described above, Sechovicz intentionally or recklessly created and disseminated solicitations promoting automated trading software for binary options that misrepresented, among other things: (1) outsized fake profits; (2) actors as actual owners or users of automated trading software; (3) hypothetical and fictitious trading results as real results; (4) testing or patenting of automated trading software; and (5) the risk of loss. By engaging in this conduct, Sechovicz violated Section 4c(b) of the Act and Regulation 32.4.

## **B. CTA Fraud in Violation of Section 4o(1) of the Act**

Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012), makes it unlawful for a commodity trading advisor (“CTA”), using the mails or any instrumentality of interstate commerce, “directly or indirectly—(A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or (B) to engage 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.” Section 4o(1) of the Act applies to CTAs regardless of whether or not they are registered as CTAs with the Commission. *CFTC ex rel. Kelley v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985).

A CTA is defined by Section 1a(12) of the Act, 7 U.S.C. § 1a(12) (2012), as including any person who, for compensation or profit, engages 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 any swap or commodity option. One who authors and sells automated trading software acts as a CTA. *See, e.g., CFTC v. Wall St. Underground, Inc.*, 281 F. Supp. 2d 1260, 1269 (D. Kan. 2003) (entering preliminary injunction on CTA fraud claims and finding that defendants acted as CTAs “in that the trading systems they author and sell provide specific recommendations for clients and prospective clients to use to trade commodity futures and commodity options.”), *aff’d*, 128 F. App’x 726 (10th Cir. 2005).

Sechovicz acted as a CTA by advising potential customers using emails, websites, promotional videos, advertorials, and social media as to the value and advisability of trading in binary options using marketed automated trading software that purported to trade in customers’ accounts on their behalf, both in the campaigns he launched and the campaigns he remarketed for other affiliate marketers. He did so for compensation or profit, as he earned a commission for each investor that opened and funded a trading account as a result of receiving a solicitation from Sechovicz and Partner. *See CFTC v. Savage*, 611 F.2d 270, 279-80 (9th Cir. 1979) (“We do not believe that the definition of commodity trading advisor requires that the ‘compensation or profit’ flow directly from the person or persons advised” (citing CFTC Interpretive Letter No. 75-11 (1975-77 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 20,098 at 20,763 n.6)).

While acting as a CTA, Sechovicz intentionally or recklessly created and disseminated solicitations promoting automated trading software for binary options that misrepresented, among other things: (1) outsized fake profits; (2) actors as actual owners or users of automated trading software; (3) hypothetical and fictitious trading results as real results; (4) testing or patenting of automated trading software; and (5) the risk of loss. By engaging in this conduct, Sechovicz violated Section 4o of the Act.

## **C. Manipulative or Deceptive Device in Violation of Section 6(c)(1) and Regulation 180.1(a)**

Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), provides in relevant part that “[i]t shall be unlawful for any person, directly or indirectly, to use or employ or attempt to use or employ, in connection with any swap . . . any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate . . . .”

Pursuant to this provision, the Commission promulgated Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2019), which makes it unlawful for any person, directly or indirectly, in connection with any swap, “to intentionally or recklessly: (1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; (2) Make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; [or] (3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person.”

Section 1a(47)(A) of the Act, 7 U.S.C. § 1a(47)(A) (2012), defines a “swap” as including, inter alia, “any agreement, contract, or transaction” that: (i) is an option of any kind; (ii) provides for payment dependent on the occurrence, nonoccurrence, or extent of occurrence of an event or contingency; or (iii) provides on an executory basis for payments based on the value of one or more interest or other rates, currencies, commodities, securities, or other financial or economic interests or property, and that transfers in whole or part the financial risk associated with a future change in such value between the parties to the transaction without also conveying an ownership interest in the asset or liability. Binary options qualify as swaps based on the plain language of Section 1a(47)(A). See *CFTC v. Vault Options, Ltd.*, No. 1:16-CV-01881, 2016 WL 5339716, at \*6 (N.D. Ill. July 20, 2016) (default judgment holding that binary options are swaps).

By intentionally or recklessly engaging in the same conduct that violated Sections 4c(b) and 4o of the Act and Regulation 32.4, Sechovicz violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1)-(3). See *CFTC v. Hunter Wise Commodities, LLC*, 21 F.Supp.3d 1317, 1347 (S.D. Fla. 2014) (finding that material misrepresentations and omissions in connection with the sale of commodities violated Section 6(c)(1) of the Act and Regulation 180.1).

#### **D. Fraudulent Advertising in Violation of Regulation 4.41(a)(1)-(3) and (b)(1)-(2)**

Regulation 4.41(a)(1)-(2), 17 C.F.R. § 4.41(a)(1)-(2) (2019), prohibits fraudulent advertising by a CTA. Regulation 4.41(a)(3), 17 C.F.R. § 4.41(a)(3) (2019), makes it unlawful for a CTA to refer “to any testimonial, unless the advertisement or sales literature providing the testimonial prominently discloses: (i) That the testimonial may not be representative of the experience of other clients; (ii) That the testimonial is no guarantee of future performance or success; and (iii) If, more than a nominal sum is paid, the fact that it is a paid testimonial.” Regulation 4.41(b)(1)-(2), 17 C.F.R. § 4.41(b)(1)-(2) (2019), requires CTAs to include specific disclosures in immediate proximity to any simulated or hypothetical performance presented in advertisements, including that the results are simulated and not from actual trading. The requirements of Regulation 4.41 apply to persons acting as a CTA, regardless of registration status. See *R&W Tech. Servs. Ltd. v. CFTC*, 205 F.3d 165, 174-76 (5th Cir. 2000).

As set forth above, Sechovicz acted as a CTA by launching six affiliate marketing campaigns and remarketing additional campaigns for others that promoted binary options trading using automated trading software. Those campaigns included emails, websites, promotional videos, and advertorials featuring testimonials from persons who purported to be actual owners or users of automated trading software and who purported to have traded binary options using the marketed automated trading software for profit. The testimonials did not prominently disclose that: (i) they were not representative of the experience of other clients; and (ii) they

were no guarantee of future performance or success; or (iii) that they were fake and portrayed by paid actors. Further, the promotional materials used by Sechovicz and Partner depicted hypothetical and fictitious trading results without displaying required disclosures in immediate proximity, including that the results were simulated and not from actual trading. To the contrary, the hypothetical and fictitious trading results were depicted as “real.” By engaging in this conduct, Sechovicz violated Regulation 4.41(a)(1)-(3) and (b)(1)-(2). *See Wall St. Underground, Inc.*, 281 F. Supp. 2d at 1270 (finding that a CTA’s advertising of a trading system in a manner that was misleading and omitted material information regarding commodity trading violated Regulation 4.41(a)); *CFTC v. Heffernan*, 245 F.Supp.2d 1276, 1296-99 (S.D. Ga. 2003) (finding CTA advertising of hypothetical results without the required disclaimer regarding such results violated Regulation 4.41(b)).

#### **IV. FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Sections 4c(b), 4o(1), and 6(c)(1) of the Act, 7 U.S.C. §§ 6c(b), 6o(1), 9(1) (2012), and Regulations 4.41(a)(1)-(3) and (b)(1)-(2), 32.4, and 180.1(a)(1)-(3), 17 C.F.R. §§ 4.41(a)(1)-(3), (b)(1)-(2), 32.4, 180.1(a)(1)-(3) (2019), by creating and disseminating affiliate marketing campaigns that fraudulently solicited investors and prospective investors to open and fund binary options trading accounts with Brokers and to trade binary options using automated trading software.

#### **V. OFFER OF SETTLEMENT**

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

- A. Acknowledges 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 Regulations, 17 C.F.R. pt. 148 (2019), 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 §§ 201-53, 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, including this Order;
- 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; and
- 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 4c(b), 4o(1), and 6(c)(1) of the Act, 7 U.S.C. §§ 6c(b), 6o(1), 9(1) (2012), and Regulations 4.41(a)(1)-(3) and (b)(1)-(2), 32.4, and 180.1(a)(1)-(3), 17 C.F.R. §§ 4.41(a)(1)-(3), (b)(1)-(2), 32.4, 180.1(a)(1)-(3) (2019), by creating and disseminating marketing campaigns that fraudulently solicited investors and prospective investors to open and fund binary options trading accounts with Brokers and to trade binary options using automated trading software;
  2. Orders Respondent to cease and desist from violating Sections 4c(b), 4o(1), and 6(c)(1) of the Act and Regulations 4.41(a)(1)-(3) and (b)(1)-(2), 32.4, and 180.1(a)(1)-(3);
  3. Orders Respondent to pay a civil monetary penalty in the amount of nine hundred forty-nine thousand, nine hundred and eighteen dollars and fifty cents (\$949,918.50), plus post-judgment interest, within one year of the date of entry of this Order, as set forth in Part VI of this Order; and
  4. Orders that Respondent be permanently prohibited from, directly or indirectly, engaging in 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)) for or on behalf of any other person or entity, and all registered entities shall refuse him trading privileges for such purposes; and
  5. Orders Respondent and his successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

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

## VI. ORDER

### Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Sections 4c(b), 4o(1), and 6(c)(1) of the Act, 7 U.S.C. §§ 6c(b), 6o(1), 9(1) (2012), and Regulations 4.41(a)(1)-(3) and (b)(1)-(2), 32.4, and 180.1(a)(1)-(3), 17 C.F.R. §§ 4.41(a)(1)-(3), (b)(1)-(2), 32.4, 180.1(a)(1)-(3) (2019), by creating and disseminating marketing campaigns that fraudulently solicited investors and prospective investors to open and fund binary options trading accounts with Brokers and to trade binary options using automated trading software.
- B. Respondent shall pay a civil monetary penalty in the amount of nine hundred forty-nine thousand, nine hundred and eighteen dollars and fifty cents (\$949,918.50) (the “CMP Obligation”), within one year of the date of entry of this Order. If the CMP Obligation is not paid in full within one year 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 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  
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 paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to: (i) the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and (ii) Regional Counsel, Division of Enforcement, Commodity Futures Trading Commission, 525 West Monroe, Suite 1100, Chicago, Illinois 60661.

- C. Respondent is permanently prohibited from, directly or indirectly, engaging in 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)) for or on behalf of any other person or entity, and all registered entities shall refuse him trading privileges for such purposes.

D. Respondent shall comply with the following conditions and undertakings set forth in the Offer:

1. **Public Statements:** Respondent agrees that neither he nor any 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 this Order or creating, or tending to create, the impression that this 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 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 (2019));
  - 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) (2019); and/or
  - d. act 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 (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. **Disgorgement:** Respondent agrees to pay disgorgement in the amount of one million, eight hundred ninety-nine thousand, eight hundred and thirty-seven dollars (\$1,899,837), (the "Disgorgement Obligation"), representing the gains received in connection with such violations. Disgorgement shall be payable as follows: \$25,000 within fourteen (14) days of the date of entry of the Order, and \$1,874,837 within one year from the date of entry of the Order. If the Disgorgement Obligation is not paid in full within one year of the date of entry of this Order, then post-judgment interest shall accrue on the Disgorgement 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).

To effect payment by Respondent and distribution to customers, the Commission appoints the National Futures Association as Monitor. The Monitor shall receive payments of the Disgorgement Obligation and any post-judgment interest from Respondent and make distributions as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, it shall not be liable for any action or inaction arising from its appointment as Monitor other than actions involving fraud.

Respondent shall pay the Disgorgement Obligation under this Order in the name of the "BO Fraud Settlement Fund" and shall send such payments by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying 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.

The Securities and Exchange Commission ("SEC") is seeking disgorgement from Respondent for the same conduct at issue in this case. Consequently, any disgorgement that Respondent pays to the SEC for his binary options solicitation fraud shall result in a dollar for dollar reduction of Respondent's Disgorgement Obligation in this matter.

The Monitor shall oversee Respondent's Disgorgement Obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to Respondent's customers or may defer distribution until such time as the Monitor may deem appropriate. In the event that the amount of payments of the Disgorgement Obligation to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a restitution distribution is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission, as discussed below.

To the extent any funds accrue to the U.S. Treasury for satisfaction of Respondent's Disgorgement Obligation, such funds shall be transferred to the Monitor for disbursement 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

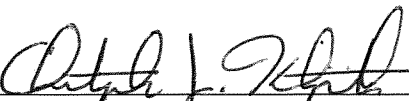
Oklahoma City, OK 73169  
(405) 954-6569 office  
(405) 954-1620 fax  
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, the Monitor shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. The Monitor shall accompany payment of the Disgorgement Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The Monitor shall simultaneously transmit copies of the cover letter and the form of payment to: (i) the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and (ii) Regional Counsel, Division of Enforcement, Commodity Futures Trading Commission, 525 West Monroe, Suite 1100, Chicago, Illinois 60661.

4. Cooperation, in General: 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.
5. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission or the Monitor of any partial payment of Respondent's Disgorgement Obligation or 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.
6. Change of Address/Phone: Until such time as Respondent satisfies in full his Disgorgement Obligation and CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission of any change to his telephone numbers and mailing addresses within ten calendar days of the change.

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

By the Commission.

  
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Christopher J. Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: October 7, 2019