

UNITED STATES OF AMERICA  
Before the  
U.S. COMMODITY FUTURES TRADING COMMISSION

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In the Matter of: )  
)  
)

Phy Capital Investments, LLC )  
and Fabio Bretas de Freitas, )

Registrants. )  
\_\_\_\_\_)

CFTC Docket No. SD 20-01

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Office of Proceedings  
Proceedings Clerk

9:58 am, May 07, 2020

**NOTICE OF INTENT TO REVOKE THE REGISTRATIONS OF PHY CAPITAL INVESTMENTS LLC AND FABIO BRETAS DE FREITAS**

**I.**

The United States Commodity Futures Trading Commission (“Commission”) 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. Phy Capital Investments LLC (“PCI”) is a Delaware limited liability company whose listed address with the Commission is 999 Brickell Ave., Suite 940, Miami, Florida 33131.

2. PCI has been registered with the Commission as a Commodity Pool Operator (“CPO”) and a Commodity Trading Advisor (CTA”) since September 10, 2014, pursuant to Section 4m(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6m(1) (2018). In addition, it previously was registered with the Commission in those capacities between April 15, 2010 and November 14, 2013.

3. Fabio Bretas de Freitas (“Bretas”) has resided in Miami, Florida and has been registered as an Associated Person (“AP”) of PCI since September 10, 2014 through the present

pursuant to Section 4k(2) and (3) of the Act, 7 U.S.C. §§ 6k(2),(3) (2018). Bretas also previously was registered as an AP of PCI from January 19, 2010 through November 14, 2013. In addition, at all relevant times, Bretas was Chief Executive Officer (“CEO”) of PCI.

4. On May 9, 2019, the Commission filed a civil injunctive action against PCI and Bretas. *See* Complaint, *CFTC v. Bretas de Freitas*, No. 1:19-cv-04238 (S.D.N.Y. May 5, 2019), ECF No. 1. The Commission’s complaint alleged, *inter alia*, that PCI and Bretas engaged in multiple acts of misappropriation of commodity pool and client funds and the issuance of materially false account statements to clients, all in violation of certain anti-fraud provisions of the Act.

5. On October 3, 2019, U.S. District Judge Jesse M. Furman entered an Order and Judgment by Default (“Default Judgment Order”) which contained findings of fact and conclusions of law which confirmed, as alleged in the Complaint, that PCI and Bretas committed fraud in violation of Sections 4b(a)(1) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(1), 6o(1) (2018), by misappropriating client funds and by delivering false account statements to clients. *CFTC v. Bretas de Freitas*, 2019 WL 5410054, at \*1-5 (S.D. N.Y. Oct. 3, 2019). The Default Judgment Order also, in relevant part, permanently restrains PCI and Bretas from:

- a. directly or indirectly committing fraud in violation of Sections 4b(a)(1) and 4o(1) of the Act;
- b. 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) (2018));
- c. entering into any transaction involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2019)) for their own personal account or for any account in which they have a direct or indirect interest;

- d. having any commodity interests traded on their behalf
- e. controlling or directing trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
- f. soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- g. 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 Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2019); and
- h. engaging in any business activities related to commodity interests.

*Id.* at \*7-8.

6. On February 28, 2020, following a plea in a related criminal action, a federal district court adjudged Bretas guilty of a felony, namely, conspiracy to commit wire fraud and commodities fraud, 18 U.S.C. 1349 (2018). Judgment in Criminal Case, *United States v. Bretas de Freitas*, No. 1:19-cr-257 (S.D.N.Y. Feb. 28, 2020), ECF No. 30. Bretas' conviction was based on his conduct as an owner and AP of PCI and it involved transactions or advice concerning contracts of sale of a commodity for future delivery, as well as fraud and misappropriation of commodity pool funds. Superseding Information, *United States v. Bretas de Freitas*, No. 1:19-cr-257 (S.D.N.Y. Aug. 8, 2019), ECF No. 12.

7. Pursuant to Section 8a(2)(C) of the Act, 7 U.S.C. § 12a(2)(C) (2018), 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: (i) acting as a futures commission merchant, introducing broker, floor broker, floor trader, CTA, CPO, or an AP of any registrant under the Act, or (ii) engaging in or continuing any activity involving embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, forgery, counterfeiting, false pretenses, bribery or gambling.

8. Pursuant to Section 8a(2)(D) of the Act, 7 U.S.C. § 12(a)(2)(D) (2018), 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, among others, a CTA, AP of a CTA, a CPO or an AP of a CPO, or (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, forgery, counterfeiting, false pretenses, bribery or gambling.

9. Pursuant to Section 8a(2)(E) of the Act, 7 U.S.C. § 12(a)(2)(E) (2018), 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 of funds within ten years preceding the filing of the registration application or any time thereafter.

10. Pursuant to Section 8a(2)(H), 7 U.S.C. § 12(a)(2)(H) (2018), of the Act, 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. Section 8a(2)(H) of the Act further provides that “principal,” as used in Section 8a(2) of the Act, includes a general partner of a partnership or a person who owns more than 10% of the voting shares of a corporation. Additionally, pursuant to Regulation 3.1(a)(1), if an entity is organized as a limited liability company, the term “principal” includes any director, president, chief executive officer,

manager, managing member or members vested with the management authority for the entity, any person in charge of a principal business unit, division or function subject to regulation by the Commission, 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.

11. The facts set forth above constitute a valid basis for the Commission to revoke PCI's registration as a CPO and CTA and Bretas' registration as an AP of PCI.

## **II.**

12. Pursuant to Regulation 3.60(a), 17 C.F.R. § 3.60(a) (2019), PCI and Bretas are hereby notified that a public proceeding shall be conducted on the following questions:

a. Whether PCI is subject to statutory disqualification from registration under Section 8a(2)(C), (E), and (H) of the Act, 7 U.S.C. § 12(a)(2)(C), (E), (H) (2018), as set forth in Section I above.

b. Whether Bretas is subject to statutory disqualification from registration under Section 8a(2)(C), (D), and (E) of the Act, 7 U.S.C. § 12(a)(2)(C), (D), (E) (2018), as set forth in Section I above; and

c. If the answer to the above question is affirmative, whether the registrations of PCI as a CPO and CTA and Bretas as an AP of PCI should be revoked.

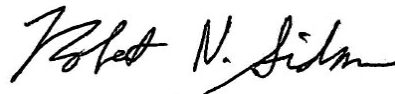
13. Such proceeding shall be held before a Presiding Officer in accordance with Regulations 3.60 and 10.8, 17 C.F.R. §§ 3.60, 10.8 (2019), and all post-hearing procedures shall be conducted pursuant to Regulation 3.60(i)-(j), 17 C.F.R. § 3.60(i)-(j) (2019).

14. In accordance with the provisions of Regulation 3.60(a)(3), 17 C.F.R. § 3.60(a)(3) (2019), PCI and Bretas are entitled to file a response challenging the evidentiary bases of the

statutory disqualification or to show cause why, notwithstanding the accuracy of the allegations, their registrations should not be revoked. Such response 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 Elizabeth M. Streit, Chief Trial Attorney, Division of Enforcement, 525 West Monroe Street, Suite 1100, Chicago, Illinois 60661, within thirty (30) days after the date of service of this Notice upon PCI and Bretas, in accordance with the provisions of Regulation 3.60(b), 17 C.F.R. § 3.60(b) (2019). If either Bretas or PCI fails to file a timely response to this Notice, the allegations set forth herein shall be deemed to be true with respect to the non-responding registrant(s), and 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) (2019).

### III.

15. The Proceedings Clerk shall serve this Notice of Intent to Revoke the Registrations of Phy Capital Investments LLC and Fabio Bretas de Freitas in accordance with Regulation 3.50, 17 C.F.R. § 3.50 (2019), or by any other means permitted under the Act or Regulations thereunder.



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

Dated: May 7, 2020