



U.S. COMMODITY FUTURES TRADING COMMISSION

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10:59 am, Feb 23, 2015

In the Matter of

ALTAMONT GLOBAL
PARTNERS LLC, and
JOHN G. WILKINS,
Registrants.

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CFTC Docket Number SD 15-01

INITIAL DECISION ON DEFAULT

Before: Philip V. McGuire, Judgment Officer
Office of Proceedings
Commodity Futures Trading Commission
Washington, D.C.

Appearances: Rachel Hayes, Trial Attorney
Peter L. Riggs, Chief Trial Attorney
Division of Enforcement,
Commodity Futures Trading Commission
Kansas City, Missouri

Introduction

This is a proceeding to revoke the registrations of Altamont Global Partners LLC and John G. Wilkins, pursuant to Section 8a(2) of the Commodity Exchange Act ("Act"), 7 U.S.C. §12a(2)(2014), and Commission rule 3.60, 17 C.F.R. § 3.60 (2014). Altamont Global Partners LLC ("Altamont") is registered as a commodity pool operator. John G. Wilkins ("Wilkins"), a listed principal, managing member and owner of a one-third interest in Altamont, is registered as the sole associated person with Altamont. In addition, National Futures Association ("NFA") records confirm that Wilkins is

Altamont's designated contact for registration, enforcement and compliance communications from the Commission.

By motion dated February 6, 2015, the Commission's Division of Enforcement ("Division") has moved for entry of a default judgment order against Wilkins and Altamont based on their failure to answer, or otherwise to appear or respond to, the Commission's **Notice of Intent to Revoke the Registrations of Altamont Global Partners LLC and John G. Wilkins**, dated November 25, 2014 ("Notice"). In this connection, on November 26, 2014, the Commission's Proceedings Clerk had properly served the Commission's Notice on Wilkins and Altamont at their last registered addresses.¹ Thus, Wilkins and Altamont were properly served pursuant to CFTC rule 3.50.²

¹ Wilkins's last listed address with the Commission is: 2801 Wassum Trail, Chuluota, FL 32766. The Commission's Notice sent to this address was returned by the Post Office marked as "Undeliverable as Addressed." The Commission's Notice sent to Wilkins's listed e-mail address, jwilkins@matterhornfund.com, was similarly returned as "Undeliverable." Wilkins's last known address is the federal correctional institution in Estill, South Carolina, where he has been incarcerated since on or about February 17, 2014. [NFA records.] The Commission's Notice addressed to Wilkins' prison address was reported as successfully "Delivered" at the U.S. Post Office website:

<https://tools.usps.com/go/TrackConfirmAction.action?Ref=fullpage&tlc=1&text28777=&tlLabels=7196900891155529959>.

As a result, the Default Notice noted that it and future Notices and Orders would not be served on Wilkins at his defunct listed address, but would be served on Wilkins exclusively at his reliable, for the foreseeable future, federal correctional institution address.

John G. Wilkins, # 60171-018
FCI Estill, 100 Prison Road
Estill, South Carolina 29918.

Altamont's last listed address with the Commission is 195 Wekiva Springs Road., Ste. 350, Longwood, Florida 32779. The Commission's Notice sent to this address was returned by the Post Office marked as "Undeliverable as Addressed." As a result, the Default Notice similarly noted that the Default Notice and future Notices and Orders would not be served on Altamont at its defunct listed address, but rather would be served on Altamont in care of Wilkins – who, as previously noted, is Altamont's designated contact for registration, enforcement and compliance communications from the CFTC -- at his current prison address. See Fed. R. Civ. P. 4(h)(1) (Service is proper if it is made on a corporation's general manager).

² Pursuant to CFTC rule 3.50, 17 C.F.R. § 3.50 (2014), for purposes of a rule 3.60 action for the denial, suspension or revocation of registration, service upon a registrant will be sufficient if mailed by registered mail or certified mail return receipt requested properly addressed to the registrant at the address shown on his application or any amendment thereto, and will be complete upon mailing. In this connection,

The Commission's Notice alleges that Wilkins and Altamont are subject to statutory disqualification from Commission registration based on:

One, the **Order** entered by U.S. District Court Judge Gregory Presnell, of the Middle District of Florida, on February 19, 2014 ("Default Order"), in *CFTC v. Altamont Global Partners LLC, John G. Wilkins, Philip Leon, and Paul Rangel* ("*CFTC v. Altamont*"): The Court's Default Order granted the Commission's motion for entry of a default judgment, and confirmed, and adopted as part of the Default Order, the Report and Recommendation, dated January 31, 2014, by United States Magistrate Judge Thomas B. Smith ("Magistrate's Report"). The Magistrate's Report found that Altamont and Wilkins, *inter alia*, committed futures and forex fraud in violation of Sections 4b(a)(1) and (2)(A)-(C), and 40(1) of the Act, and Commission rule 5.2(b)(1)-(3), by misappropriating commodity pool funds, and by delivering false account statements to pool participants.

Two, the related **Second Amended Final Default Judgment with Permanent Injunction** in *CFTC v. Altamont*, issued by Judge Presnell on July 8, 2014 ("Final Default Judgment with Permanent Injunction"): The Court's Final Default Judgment with Permanent Injunction required Altamont to pay about \$10.97 million in disgorgement; required Wilkins to pay about \$1.21 million in disgorgement, and to pay a civil monetary penalty of about \$3.64 million; imposed permanent trading bans against Altamont and Wilkins; and prohibited Altamont and Wilkins from violating Sections 4b and 40(1) of the Act, and Commission rule 5.2(b)(1)-(3).

Three, Wilkins' conviction by **Judgment** dated January 28, 2014, in a related criminal action, *United States v. John G. Wilkins*: In this case, on August 23, 2013, Wilkins pled guilty to one count of conspiracy to commit mail fraud and wire fraud in violation of 18 U.S.C. § 1349, in connection with his role as a controlling operator of Altamont. On January 28, 2014, U.S. District Court Judge Anne C. Conway, also of the Middle District of Florida, sentenced Wilkins to 108 months in federal prison, and ordered Wilkins to forfeit about \$17.04 million in restitution.

Wilkins and Altamont did not respond to the Commission's November 25th Notice.

pursuant to CFTC rule 3.30(a), 17 C.F.R. § 3.30(a) (2014), the address of each registrant as submitted on its application for registration or as submitted on the biographical supplement shall be deemed to be the address for delivery to the registrant for any communications from the Commission, including any summons, complaint, notice and other written documents or correspondence, unless the registrant specifies another address for this purpose. Moreover, CFTC rule 3.30(b), 17 C.F.R. § 3.30(b) (2014), provides that each registrant, while registered and for two years after the termination of registration, must notify the National Futures Association ("NFA") of any change of address, and that failure to do so may result in an order of default in any Commission or NFA proceedings.

Accordingly, on January 6, 2015, I issued a Default Notice finding that Wilkins and Altamont were in default, and setting the deadlines for the Division to file a motion for entry of a default judgment and for Wilkins and Altamont to file any opposition to the Division's motion. Wilkins and Altamont failed to respond to the Default Notice, failed to respond to the Division's motion, and otherwise have failed to participate in this proceeding. Accordingly, this matter is ripe for entry of a default judgment, pursuant to Commission rules 3.60(g) and 10.93, 17 C.F.R. §§ 3.60(g) and 10.93 (2014).

As a result of their defaults, Wilkins and Altamont have waived a hearing on all of the issues and are precluded from introducing evidence of mitigation and rehabilitation which is necessary to rebut the strong presumption of unfitness for registration created by Wilkins' felony conviction in *U.S. v. Wilkins*, and by the findings of fact, conclusions of law, and sanctions in the Court's Default Order and the Final Default Judgment with Permanent Injunction in *CFTC v. Altamont*. Thus, the well-plead allegations in the Notice, as augmented by the evidence and the proposed findings and conclusions in the Division's motion, are deemed true and conclusive for purposes of finding that Altamont is statutorily disqualified from registration under Sections 8a(2)(C), (E) and (H) of the Act, and that John G. Wilkins is statutorily disqualified from registration under Sections 8a(2)(C), (D) and (E) of the Act. Thus, as set out below: the Division's motion has been granted; Wilkins and Altamont have been found to be unfit for registration and statutorily disqualified from registration; and the registrations of Wilkins and Altamont have been revoked.

Findings of Fact

1. Altamont Global Partners LLC, formerly the Matterhorn Fund LLC, is a Florida limited liability corporation located in Longwood, Florida at the relevant time. Altamont has been registered as a commodity pool operator (“CPO”) since November 17, 2009, pursuant to Section 4m(1) of the Act, 7 U.S.C. §6m(1) (2014).³ See Division’s motion, Exhibit A, at pp. 1- 2, and Exhibit C, at pp. 1-2.

2. John G. Wilkins, a Florida resident and a listed principal, managing member and approximately one-third owner of Altamont, has been registered as an associated person (“AP”) of Altamont since November 17, 2009, pursuant to Section 4k(3) of the Act, 7 U.S.C. §6k(3) (2014).⁴ Wilkins is in charge of Altamont’s accounting and compliance and is a signatory on Altamont’s bank accounts. Wilkins also is Altamont’s designated contact for registration, and enforcement and compliance communications from the Commission. See *id.*, Exhibit B(1), at pp. 1- 2.

3. On July 16, 2012, the Commission filed, in U.S. District Court for the Middle District of Florida, a civil injunctive complaint against Altamont and Wilkins, and his two nonregistered co-owners. *CFTC v. Altamont Global Partners LLC, John G. Wilkins, Philip Leon, and Paul Rangel*, Case No. 6:12-cv-1095-orl-31TBS (M.D. Fla.). The Commission's complaint alleged, *inter alia*, that Altamont and Wilkins, from approximately March 2009 to at least June 22, 2012: had operated a fraudulent scheme that solicited at least \$13 million from approximately 198 commodity pool participants

³ In September 2010, Altamont filed an application for registration as a retail foreign exchange dealer (“RFED”), but on October 21, 2010, Altamont withdrew its pending registration as an RFED.

⁴ Wilkins also is listed as an approved “Forex Associated Person.” In this connection it should be noted that Forex Associated Person is not a separate registration class. Rather it is a term used by NFA to identify those associated persons who also conduct forex activity. Thus, the NFA requires an RFED to designate at least one principal who is an approved Forex Associated Person. See <http://www.nfa.futures.org/NFA-registration/rfed/index.HTML>. As previously noted, Altamont never became registered as an RFED, thus rendering null Wilkins’ designation as the firm’s forex AP.

to trade commodity futures contracts, options on futures, and forex contracts, had misappropriated a combined total of more than \$5.2 million of pool participants' funds as "loans" and "advances" and bogus management and performance fees, which were sham transactions designed to disguise the misappropriations, and had issued materially false account statements to pool participants reporting non-existent profits and significantly inflated net asset values, in violation of certain anti-fraud provisions of the Act and the Commission's regulations. *See id.*, Exhibit C, at pp. 1-2.

On January 31, 2014, U.S. Magistrate Judge Thomas B. Smith issued the Report recommending that the Court grant the Commission's then-pending motion for entry of default judgment against Altamont and Wilkins. The Magistrate's Report contained findings of fact and conclusions of law which confirmed, as alleged in the complaint, that Altamont and Wilkins had misappropriated commodity pool funds, and delivered misleading quarterly account statements to pool participants that falsely inflated asset values and profits in order to conceal the substantial trading losses and misappropriations. The Magistrate also found that Wilkins controlled Altamont and knowingly induced Altamont's misconduct, and that Wilkins' unlawful conduct had been intentional, "egregious," and sustained and repeated over three years. The Magistrate concluded that Wilkins and Altamont had violated Sections 4b(a)(1) and (2)(A)-(C), and 40(1) of the Act,⁵ and Commission rule 5.2(b)(1)-(3).⁶ *See id.*, Exhibit C.

⁵ Section 4b(a)(1) and (2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1) and (2)(A)-(C)(2014), provides:

It shall be unlawful (1) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person; or (2) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or

On February 19, 2014, the Court entered the Default Order that fully confirmed and adopted the Magistrate's Report. *See id.*, Exhibit D.

On July 8, 2014, the Court entered the Final Default Judgment with Permanent Injunction: one, that permanently enjoins Altamont and Wilkins from directly or indirectly committing fraud in violation of Sections 4b and 4q(1) of the Act, and Commission rule 5.2(b)(1)-(3), from applying for registration or claiming exemption from registration with the Commission in any capacity, and from engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Commission rule 4.14(a)(9); and two, that permanently enjoins Wilkins from acting as a principal (as that term is defined in CFTC rule 3.1(a)), agent, or any other officer or employee of any person (as that term is defined in Section 1a of the Act, 7 U.S.C. § 1a) registered, exempted from registration, or

execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person.

Section 4q(1) of the Act, 7 U.S.C. § 6q(1)(2014), provides:

It shall be unlawful for a . . . commodity pool operator, or associated person of a commodity pool operator by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly 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.

The Magistrate's Report noted that the Commodity Exchange Act had been amended in 2011 (as part of the Dodd-Frank Act), and that Altamont's and Wilkins' conduct at issue had stretched from 2009 to 2012, thus making both versions of the Commodity Exchange Act applicable to the case. However, the Report concluded, the amendments to Sections 4b and 4q were "not so substantive as to warrant separate discussion." Magistrate's Report, at fn. 4, p. 13. In the Default Order and the Final Default Judgment, the Court referenced in parallel citations the 2012 edition of the U.S. Code.

⁶ Commission rule 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3)(2014), provides:

It shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction: (1) to cheat or defraud or attempt to cheat or defraud any person; (2) willfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or (3) willfully to deceive or attempt to deceive any person by any means whatsoever.

Rule 5.2 has not been revised since it became effective in 2010. In the Default Order and the Final Default Judgment, the Court referenced in parallel citations the 2012 edition the Code of Federal Regulations.

required to be registered with the Commission, except as provided for in CFTC rule 4.14(a)(9). *See id.*, Exhibit E.

4. On January 28, 2014, in a related criminal action, *United States v. John G. Wilkins*, Case No. 6:13-cr-181-orl-22DAB (M.D. Fla.), the United States District Court for the Middle District of Florida adjudged Wilkins guilty of conspiracy to commit mail fraud and wire fraud in violation of 18 U.S.C. § 1349. Wilkins's conviction was based on his conduct as an owner and AP of Altamont, and Wilkins's conviction involved transactions or advice concerning contracts of sale of a commodity for future delivery and the same fraud and misappropriation of commodity pool funds supporting the Court's Default Order entered in *CFTC v. Altamont*. *See id.*, Exhibit B(2) (Information filed July 19, 2013; Waiver of Indictment filed August 2, 2013; Acceptance of Guilty Plea and Adjudication of Guilt entered August 23, 2013; and Judgment entered on January 28, 2014).

Discussion and Conclusions of Law

Section 8a(2) presumption of unfitness

Section 8a(2) of the Act, 7 U.S.C. § 12a(2) (2014), sets out eight grounds for denial, suspension or revocation of registration, known customarily as “statutory disqualifications.” According to the relevant House Agriculture Committee Report, each Section 8a(2) disqualification involves a previous formal determination by a court, or the Commission or other government agency, that a person or firm has engaged in conduct involving “especially grave offenses that are clearly related to a person’s [or firm’s] fitness for registration with the Commission.” H.R. report No. 97-565, Part I at 50 (May 17, 1982). The report further explained that, since each Section 8a(2)

disqualification is based upon a previous finding or order by a court, or the Commission or other governmental body, “whether or not a person is subject to such a disqualification generally is readily ascertainable by checking officially maintained records.” *Id.*

In conjunction with the Commission’s Part 3 rules, a Section 8a(2) disqualification generally operates as a strong presumption that a person or firm is conclusively unfit to do business in a relevant registered capacity. The Commission has noted that the strong presumption of unfitness for registration under Section 8a(2) rests on the common-sense inference that once an individual or firm has undertaken serious wrongdoing – as it has been amply demonstrated here that Altamont Global Partners LLC and its owner John G. Wilkins have done – a substantial risk exists that the individual or firm will undertake similar wrongdoing in the future. *See In re Akar*, Comm. Fut. L. Rep. ¶ 22, 297 (CFTC February 24, 1986). The strong presumption of unfitness can be rebutted by a convincing showing that allowing a person or firm to become or remain registered will not pose a risk to the public, including, for example, mitigating circumstances, rehabilitation, or close supervision by another registrant. *See* Commission rule 3.60(b)(2). By defaulting, Altamont and Wilkins have precluded themselves from presenting such rebuttal evidence.

Section 8a(2)(C) of the Act

Pursuant to Section 8a(2)(C) of the Act, 7 U.S.C. § 12a(2)(C) (2014), 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: one, acting as a futures commission merchant,

introducing broker, floor broker, floor trader, commodity trading advisor, CPO, or an AP of any registrant under the Act, or two, engaging in or continuing any activity involving fraud or any transaction in or advice concerning contracts of sale of a commodity for future delivery or concerning matters subject to Commission regulation under Sections 4c or 19 of the Act, 7 U.S.C. §§ 6c or 23 (2014). Here, cause exists for statutory disqualification of Altamont and Wilkins pursuant to Section 8a(2)(C), because in *CFTC v. Altamont* the United States District Court for the Middle District of Florida, a court of competent jurisdiction, on July 8, 2014, issued the Final Default Judgment with Permanent Injunction, which permanently enjoins Altamont and Wilkins from directly or indirectly committing fraud in violation of Sections 4b and 4c(1) of the Act, and Commission rule 5.2(b)(1)-(3), and permanently enjoins Altamont and Wilkins from acting as registrants under the Act.

Section 8a(2)(D) of the Act

Pursuant to Section 8a(2)(D) of the Act, 7 U.S.C. § 12(a)(2)(D) (2014), the Commission may revoke the registration of any person who, within ten years preceding the filing of the application for registration or at any time thereafter, has been convicted of any felony that involves any transactions or advice concerning any contract of sale of a commodity for future delivery, that arises out of the conduct of the business of, among others, a CPO or an AP of a CPO, or that involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, forgery, counterfeiting, false pretenses, bribery or gambling. Here, cause exists for statutory disqualification of Wilkins pursuant to Section 8a(2)(D), because Wilkins pled guilty and was convicted of conspiracy to commit mail fraud and wire fraud in violation of 18 U.S.C. § 1349, in *U.S.*

v. Wilkins. Wilkins's felony conviction was based on his conduct as an owner and AP of Altamont, which involved transactions or advice concerning contracts of sale of a commodity for future delivery and involved the same fraud and misappropriation of commodity pool funds supporting the Court's Default Order entered in *CFTC v. Altamont*.

Section 8a(2)(E) of the Act

Section 8a(2)(E) of the Act, 7 U.S.C. § 12a(2)(E) (2014), authorizes the Commission to 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 application for registration or any time thereafter. Here, cause exists for statutory disqualification of Altamont and Wilkins pursuant to Section 8a(2)(E), because in *CFTC v. Altamont* the United States District Court for the Middle District of Florida, a court of competent jurisdiction, on February 19, 2014, entered the Default Order confirming and adopting the Magistrate's Report which contained findings of fact and conclusions of law that Altamont and Wilkins committed fraud in violation of Sections 4b(a)(1) and (2)(A)-(C), and 4o(1) of the Act, and Commission rule 5.2(b)(1)-(3), by misappropriating commodity pool funds and by delivering false account statements to pool participants.

Section 8a(2)(H) of the Act

Section 8a(2)(H) of the Act, 7 U.S.C. § 12a(2)(H) (2014), authorizes the Commission to revoke the registration of any person if "revocation of the registration of any principal of such person would be warranted because of a statutory disqualification listed in this paragraph [*i.e.*, listed in Sections 8a(2)(A)-(G)] ."

Section 8a(2)(H) further provides that the term "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. In this connection, Commission rule 3.1(a)(1), 17 C.F.R. § 3.1(a)(1) (2014), provides that 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.

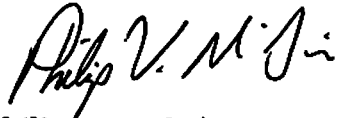
Here, Wilkins is listed with the Commission as a principal of Altamont, owns a more than 10% financial interest in Altamont, and controls Altamont; and the revocation of Wilkins' registration has been found to be warranted pursuant to Sections 8a(2)(C), (D) and (E). Thus Altamont's registration is subject to revocation pursuant to Section 8a(2)(H).

ORDER

Altamont Global Partners LLC is statutorily disqualified from registration under Sections 8a(2)(C), (E) and (H) of the Commodity Exchange Act; and John G. Wilkins is statutorily disqualified from registration under Sections 8a(2)(C), (D) and (E) of the Commodity Exchange Act. Accordingly: the Division's motion for entry of a default judgment is GRANTED; Altamont Global Partners LLC and John G. Wilkins are

FOUND conclusively unfit for registration; and the registrations of Altamont Global Partners LLC and John G. Wilkins are REVOKED.

Dated February 23, 2015.

A handwritten signature in black ink, appearing to read "Philip V. McGuire". The signature is written in a cursive style with a large initial "P" and "M".

Philip V. McGuire,
Judgment Officer