

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

Case No. 3:17-cv-774-J-32MCR

JASON B. SCHARF, CIT
INVESTMENTS LLC,
BREVSPAND EOOD, CIT
INVESTMENTS LTD., A&J MEDIA
PARTNERS, INC., MICHAEL
SHAH, and ZILMIL, INC.,

Defendants.

**ORDER FOR FINAL JUDGMENT BY DEFAULT,
PERMANENT INJUNCTION, CIVIL MONETARY
PENALTIES, AND OTHER STATUTORY AND EQUITABLE
RELIEF AGAINST DEFAULTING CITRADES DEFENDANTS**

On July 10, 2017, the Commodity Futures Trading Commission (“CFTC,” “Commission,” or “Plaintiff”) filed a Complaint (Doc. 3) charging Defendants Jason B. Scharf; CIT Investments LLC, a Nevada limited liability company; Brevspand EOOD, a Bulgarian business entity; CIT Investments Ltd., an Anguillan business entity; and A & J Media Partners, Inc., a California corporation (collectively, “Citrades Defendants”) with violating Sections 2(e), 4c(b), 4d(a)(1), 4m(1), 4c(b), 4o(1), and 6(c)(1) of the Commodity

Exchange Act (“Act”), 7 U.S.C. §§ 2(e), 6c(b), 6d(a)(1), 6m(1), 6c(b), § 6o(1), § 9(1) (2012), and Commission Regulations 32.2, 32.4, 4.41(a), and 180.1(a), 17 C.F.R. §§ 32.2, 32.4, 4.41(a), 180.1(a) (2018).

Between July 13, 2017 and September 26, 2017, Defendants CIT Investments LLC, Brevspand EOOD, and CIT Investments Ltd. (collectively, “Defaulting Citrades Defendants”) were properly served with the Summons and Complaint pursuant to Rule 4(h) of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”) via a combination of mail (UPS) and in-person service. (Docs. 10-12 (service upon principal), Doc. 37 (service upon foreign entities consistent with Hague Convention and U.S. Constitution), Doc. 56 (same).)

On July 12, 2017, the Court entered an *ex parte* statutory restraining order against the Citrades Defendants that, among other things, authorized the freezing of assets held in the name of or under the control or management of the Citrades Defendants. (Doc. 8.) On August 9, 2017, the Court entered a consent preliminary injunction against Defendants Jason Scharf and A & J Media Partners, Inc. on substantially the same terms as the *ex parte* statutory restraining order. (Doc. 32.) On August 10, 2017, the Court entered a similar preliminary injunction against the Defaulting Citrades Defendants. (Doc. 35.)

The Defaulting Citrades Defendants failed to appear or answer the Complaint within the time permitted by Fed. R. Civ. P. 12(a)(1). Accordingly, the Commission filed motions for entry of a clerk’s default against the

Defaulting Citrades Defendants and on April 10, 2018 the Clerk of this Court entered defaults against the Defaulting Citrades Defendants. (Docs. 103-105.)

The Commission has moved this Court to grant final judgment by default against the Defaulting Citrades Defendants, order permanent injunctive relief, and impose a restitution obligation and civil monetary penalty. (Docs. 134 and 220.)

The Court has carefully considered the Complaint, the allegations of which are well-pleaded and hereby taken as true, the Commission's memoranda in support of its motion for final judgment by default, the record in this case, and the Court being otherwise advised in the premises, it is hereby:

ORDERED that the Plaintiff's Motion for Final Judgment by Default, Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief against the Defaulting Citrades Defendants is **GRANTED**. Accordingly, the Court enters findings of fact, conclusions of law, and an Order of Final Judgment by Default for Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief ("Order") pursuant to Sections 6c and 6d of the Act, 7 U.S.C. § 13a-1 (2012), as set forth herein.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction and Venue

1. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), which provides that whenever it shall appear to the Commission that any 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 promulgated thereunder, the Commission may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

2. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e), because the Defaulting Citrades Defendants transacted business in this jurisdiction and the acts and practices in violation of the Act and Regulations occurred, are occurring, or are about to occur within this District, among other places.

B. The Parties

3. Plaintiff Commodity Futures Trading Commission is the independent federal regulatory agency charged with the administration and enforcement of the Commodity Exchange Act and regulations promulgated thereunder.

4. Defendant Jason B. Scharf is a natural person who, during the Relevant Period, resided in Valley Village, California. (Doc. 5-3, Cavers Decl. ¶ 4.)

5. Defendant CIT Investments LLC (“CIT Investments Nevada”) was a Nevada limited liability corporation. (*Id.* ¶ 5.) Scharf was a managing member and shareholder of CIT Investments Nevada. (*Id.*) CIT Investments dissolved on June 8, 2015.¹ (*Id.*)

6. Defendant Brevspand EOOD (“Brevspand”) is a Bulgarian business entity with a mailing address in Sophia, Bulgaria. (Doc. 5-1, Notes on IncidentID 22849616 at 43; *see also* Doc. 5-3, Cavers Decl. ¶ 6.) Brevspand’s principal place of business during the Relevant Period was at Scharf’s home in Valley Village, California. (Doc. 5-2.2, Customer 47478905 Records at 11.) Scharf was a manager, shareholder, and partner in Brevspand during the Relevant Period. (Doc. 5-2, Notes on IncidentID 22849616 at 43, 55.) Scharf was listed as the CEO of Brevspand in investment contracts sent to Citrades customers. (Doc. 5-3, Cavers Decl. ¶ 6.)

7. Defendant CIT Investments Ltd. (“CIT Anguilla”) was an Anguillan business entity with a mailing address in Stoney Ground, Anguilla.

¹ An action can be brought against a dissolved Nevada LLC within three years of the effective date of the articles of dissolution for claims that the plaintiff was unaware of, or could not, through the exercise of reasonable diligence, have known about before the date of dissolution. Nev. Rev. Stat. Ann. § 86.505.

(Doc. 5-2.2, Notes on IncidentID 22849616 at 39; *see also* Doc. 5-3, Cavers Decl. ¶ 7) Scharf was authorized to act as the director of CIT Anguilla. (Doc. 5-2.2, Notes on IncidentID 22849616 at 40.) CIT Anguilla dissolved on November 10, 2016. (Doc. 5.3, Cavers Decl. ¶ 7.)

8. Defendant A & J Media Partners, Inc. (“A&J Media”) was a California corporation with its principal place of business at Scharf’s home in Valley Village, California. (*Id.* ¶ 9; *see also* Doc. 5.2, Customer 52299284 Records at 15.) Citrades customers were told that A&J Media is a “DBA” of Citrades. (Doc. 5-4, Schulte Decl. ¶ 6; *see also* Doc. 5-4, Emails Between Schulte and Citrades at 9.) A&J Media dissolved on June 1, 2015.² (Doc. 5-3, Cavers Decl. ¶ 9.) None of the Citrades Defendants has ever been registered with the Commission in any capacity. (*Id.* ¶¶ 4-9.)

9. Defendants Brevspand, CIT Investments Nevada, CIT Investments Anguilla, and A&J Media were part of a single common enterprise, and transacted their business through a maze of related companies. The companies had common ownership and management, commingled funds, utilized common resources, had a unified marketing

² A California corporation which is dissolved nevertheless continues to exist for the purpose of defending actions against it. Cal. Corp. Code § 2010. Such actions can be brought against the dissolved corporation within four years of dissolution. *Id.* § 2011.

strategy, participated in a shared business scheme, and had a common source of revenue.

C. The Citrades Defendants' Binary Options Scam

10. From at least June 2013 through the filing of the Complaint (“Relevant Period”), Defendant Jason Scharf (“Scharf”), individually and acting through a common enterprise that included Defendants Brevspand EOOD, CIT Investments LLC, CIT Investments Ltd., and A&J Media Partners, Inc. (collectively, with Scharf, “Citrades Defendants”), have operated a massive scam in which the Citrades Defendants fraudulently solicited customers to enter into illegal, off-exchange investments in so-called “binary options.”

1. Citrades: “The Most Profitable Click You’ll Ever Make”

11. Throughout the Relevant Period, Defendant Scharf, acting through various agents, employees, and business entities, including the Defaulting Citrades Defendants, operated an illegal binary options scam through various websites, including but not limited to www.citrades.com (“Citrades website”). The Citrades website operated through February 2017, but has since been taken down. (Doc. 5-1, Mack Decl. ¶¶ 7-8.)

12. The Citrades website purported to offer customers the ability to enter into binary options contracts on numerous commodities, indices, and currencies, including, but not limited to, foreign exchange and broad-based

stock indices. (Doc. 5-1, Dec. 12, 2016 Citrades Website at 22-26.) The website purported to be the “leading platform” for trading binary options online. (*Id.* at 5.)

13. The Citrades website claimed falsely that, “Citrades.com was started by a group of highly accredited Wall Street brokers who wanted to bring everyone in the world an easy way to invest with an educational and no stress platform.” (*Id.* at 15.) In reality, the Citrades website was started by Jason Scharf, who is not now, and has never been, a highly accredited Wall Street broker. (*Compare* Doc. 5-2, Customer 47478905 Records at 4-5, 7, *with* Doc. 5-3, Cavers Decl. ¶ 4.)

14. The Citrades website made false and misleading statements of material fact about, or failed to disclose material facts about, its binary options products, including, but not limited to facts or omissions concerning the likelihood of profit and risk of loss, such as:

- describing its binary options as “safe & secure investments” (Doc. 5-1, Dec. 12, 2016 Citrades Website at 6);
- stating that “Binary [] Options are the fastest and most efficient way to convert your financial decisions into substantial profits” (*id.*);
- stating that opening an account with Citrades is “the most profitable click you’ll ever make” (*id.* at 15); and,
- claiming that traders “profit up to 89%,” (*id.* at 6, 18) and that customers can make “up to 500% returns” using the Citrades “one-touch options” feature (*id.* at 20).

2. Self-Traded, Managed, and “Autotraded” Accounts

15. The Citrades website allowed customers to choose to open one of three different types of accounts: self-traded accounts, managed accounts, and “autotraded” accounts. (Doc. 5-1, Dec. 12, 2016 Citrades Website at 5-6, 9-10.) For self-traded accounts, a customer need only choose the asset he or she wants to trade, click “call” if they believe the price will rise, or “put” if they believe the price will fall. (*Id.* at 5-6.) For managed accounts, the Citrades website offered customers the opportunity to have a “dedicated account manager” direct the trades placed in their accounts. (*Id.* at 5, 9-10.) For autotraded accounts, the Citrades website provided an “automated, hands-free trading program” through which “expert trades” were “automatically copied” to the customer’s account. (*Id.*)

3. Fake Testimonials

16. The Citrades website featured testimonials from purported customers. (Doc 5-1, Dec. 12, 2016 Citrades Website at 16-17.) These testimonials were fabricated, and the representations made were false. (*See* Doc. 5-3, Cavers Decl. ¶ 26.) The fake testimonials made claims such as the following:

- “I never knew how easy it was to pull 85% returns from simple 60 second trades” (Doc. 5-1, Dec. 12, 2016 Citrades Website at 16-17);

- “I can only thank Citrades for the success I have found using their managed account. After a short 2 months I was able to pay for a year of college tuition” (*id.*, May 12, 2016 Citrades Website at 33); and
- “Citrades has proven to be a really reliable broker. Depositing is easy, withdrawals are always on time, and the market rates are fair” (*id.*, Dec. 12, 2016 Citrades Website at 16-17).

4. AutoTradingBinary: “100% Automated Binary Options Profits”

17. The Citrades Defendants operated a second website, www.autotradingbinary.com (“ATB website”), to trick customers into funding an account through the Citrades website. The ATB website operated through February 2017. (Doc. 5-1, Mack Decl. ¶¶ 7, 9.)

18. The ATB website encouraged customers to register for ATB’s “hands-off” autotrading service, which it touted as “100% free,” while falsely promising “100% automated binary options profits.” (*Id.*, Autotradingbinary Website at 35-36.) Once the customer registered, the customer was directed to open an account with Citrades. (*See id.* at 38; *see also* Doc. 5-5, Moore Decl. ¶ 19.)

19. The ATB website failed to disclose its affiliation with Citrades, claiming falsely that, “we are a third-party and are not affiliated with any of the brokers we push, so we do not have a bias like the brokers do.” (Doc. 5-1, Autotradingbinary Website at 38.) In reality, ATB and Citrades were

operated by the Citrades Defendants. (*Compare* Doc. 5-2, Customer 52299284 Records at 13-15, *with* Doc. 5-2, Customer 47478905 Records at 4-5, 7.)

20. The ATB website highlighted “trading results” from its so-called “expert traders,” whose trades are “automatically copied to your binary options account, even while you sleep!” (Doc. 5-1, Autotradingbinary Website at 36.) For example, the ATB website claimed that ATB expert trader “Pavel Abdulov” had “85% winning trades” in 2016. (*Id.* at 40.)

21. The ATB website also featured trading results from its “robots.” (*Id.* at 39.) The ATB website claimed that “our robots efficiently predicted the market trends and managed to secure 73 percent [sic] trading result.” (*Id.*)

5. Fraudulent Email and Telephone Solicitations

22. Customers who provided their contact information through the Citrades or ATB websites received emails touting the outsize returns purportedly enjoyed by Citrades and ATB customers. For example, one email, from “admin@citrades.com,” claimed that: “October was ... our 18th profitable month in a row with our managed accounts If you do not have a fully automated managed account with us, I strongly encourage you to get started.” (Doc. 5-6, Santos Decl. ¶ 11.)

23. Similarly, another email, from “support@autotradingbinary.com,” claimed that ATB’s “new analyst,” “Robert,” had “5 winning months in a row, and his fully managed accounts the past two months have been on fire

Below you will see a snapshot of Robert’s real life strategy performance for the past 30 trading days, which have taken a \$12k account to almost \$40,000 in a month.” (*Id.* ¶ 12.)

24. Customers also received telephone calls from Citrades and ATB sales representatives promising “guaranteed returns” of as much as 100%. (*See* Doc. 5-4, Schulte Decl. ¶ 4; Doc. 5-5, Moore Decl. ¶¶ 6-7, 10-11, 19.)

6. Customer Losses and Misappropriation by Citrades Defendants

25. Contrary to the Citrades Defendants’ representations, there was a substantial risk that customers would lose money trading binary options, either to “trading” losses or to misappropriation by the Citrades Defendants.

26. When a customer sought to open a Citrades account, the customer would be instructed to wire money to one of several overseas bank accounts belonging to foreign entities controlled by Scharf, including Defaulting Citrades Defendants Brevspand or CIT Investments Anguilla. (*See* Doc. 5-1, Dec. 12, 2016 Citrades Website at 12-14; *see also* Doc. 5-4, Schulte Dec. ¶¶ 5-6; Doc 5-5, Moore Decl. ¶¶ 11-12.) Customers could also fund a Citrades account using a credit card. (*See* Doc. 5-1, Dec. 12, 2016 Citrades Website at 12-14; Doc. 5-5 Moore Decl. ¶¶ 8-9.) The Citrades Defendants kept most of the money overseas, but periodically repatriated funds through transfers to Scharf or his family members, or to U.S. companies controlled by Scharf,

including Defaulting Defendant CIT Investments Nevada and Defendant A&J Media. (Doc. 5-3, Cavers Decl. ¶¶ 12-22.)

27. The Defaulting Citrades Defendants used various pretexts for refusing to return customer money. One such pretext was the “haywire autotrader.” This was used with customer Iven Moore, who was instructed by Citrades customer service representatives to sign up for the Autotradingbinary service with the expectation that it would place profitable trades. (Doc. 5-5, Moore Decl. ¶ 19.) Contrary to the representations on the Citrades website, Mr. Moore saw his account balance decline from \$47,000 to nothing in the space of two months. (*Id.* ¶ 20.) When Mr. Moore asked Citrades to return the remaining \$10,000, Citrades representatives stopped taking his calls. (*Id.*) The \$10,000 was never returned. (*Id.* ¶ 21.)

28. Many times there was no pretext for refusing to return customer funds. Citrades representatives simply ignored customer requests to withdraw their principal or trading profits. (Doc. 5-4, Schulte Decl. ¶¶ 12-14; Doc. 5-6, Santos Decl. ¶¶ 14-15.)

7. Citrades VIP Program

29. In some cases, customers who made large initial deposits were singled out for special treatment through the Citrades “VIP” program. (*See* Doc. 5-1, Dec. 12, 2016 Citrades Website at 7.) In the VIP program, Citrades

sales representatives promised customers enormous, guaranteed profits if they invested \$20,000 or more via the Citrades website.

30. Citrades customer David Schulte was a Citrades VIP customer. (Doc. 5-4, Schulte Dec. ¶ 3.) Mr. Schulte received an email from a Citrades sales representative claiming that:

If you invest in an additional minimum of \$14,000.00 we will GUARANTEE, with a 6 month contract, a minimum 5% ROI per month. Not only that, but at the end of each month we will send you 5%* to your bank account for each of the 6 months. This means that on \$20,000.00 invested you are guaranteed \$6,000.00 (\$1,000.00 per month) profit received in hand with no shrinkage on your principal.

(*Id.* ¶ 5.)

31. Mr. Schulte also received a VIP account agreement promising that: “[t]he total principal amount of \$124,011.00 is guaranteed against loss ... with a monthly minimum guaranteed revenue (ROI) of 6.75% for the 6 month term of this contract.” (*See id.* ¶ 7; *see also* Doc. 5-4, Signed VIP Agreement at 17.)

32. Mr. Schulte deposited \$100,000 through the Citrades VIP program. (Doc. 5-4, Schulte Decl. ¶ 14.) Mr. Schulte made these deposits based on the representations in the VIP agreement, and on the strength of what appeared to be profitable trading in his online Citrades account. (*Id.* ¶¶ 4, 11.) Indeed, Mr. Schulte reported seeing profits of \$60,000 after just a few months’ trading by one of Citrades’s VIP account managers. (*Id.* ¶ 11.)

33. When Mr. Schulte asked Citrades to send him the “guaranteed returns,” Citrades representatives stopped taking his calls. (*Id.* ¶¶ 12-13.)

Mr. Schulte never received any of his money back from Citrades. (*Id.* ¶ 14.)

D. Customer Funds Received by the Defaulting Citrades Defendants

34. As set forth above, the Defaulting Citrades Defendants were part of a single common enterprise utilized by Defendant Scharf to defraud customers through the Citrades binary options scam.

35. When customers opened a trading account with the Citrades website, they were instructed by sales representatives to fund their account with a wire transfer or with a credit card payment. (Doc. 220-4, Scharf Decl. ¶ 3.)

36. Customer wires and credit card payments ultimately wound up being deposited in accounts belonging to the Defaulting Citrades Defendants. (*Id.* ¶ 4.)

37. During the Relevant Period, Brevspand received at least \$609,486.15 in customer funds. (Doc. 220-1, Dasso Decl. ¶ 21; *see also* Doc. 220-4, Scharf Decl. ¶¶ 9-11, 14-15.)

38. CIT Investments Anguilla received at least \$3,506,782.22 in customer funds. (Doc. 220-1, Dasso Decl. ¶ 21; *see also* Doc. 220-4, Scharf Decl. ¶¶ 11-15.)

39. CIT Investments Nevada received at least \$364,164.23 in customer funds. (Doc. 220-1, Dasso Decl. ¶ 21; *see also* Doc. 220-4, Scharf Decl. ¶¶ 11, 16-17.)

40. In total, the Defaulting Citrades Defendants received \$4,480,432.60 from customers during the Relevant Period. (Doc. 220-1, Dasso Decl. ¶ 21.) There is no indication that the Defaulting Citrades Defendants returned any of the money. (*Id.* ¶ 20.)

E. Violations of the Act and Regulations

41. By the conduct described in paragraphs 1 through 40 above, the Defaulting Citrades Defendants:

- a. Engaged in off-exchange swaps transactions with retail customers, i.e., binary options trading,³ in violation of Section 2(e) of the Act, 7 U.S.C. § 2(e) (2012);
- b. Offered or entered into off-exchange transactions in commodity options in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), and Regulation 32.2, 17 C.F.R. § 32.2 (2018);
- c. Solicited or accepted orders, and accepted money, for commodity options or swap transactions, i.e., binary options, without

³ Binary options qualify as swaps because the definition of swaps includes “any agreement, contract or transaction ... that is a put, call ... or similar option of any kind that is for the purchase or sale, or based on the value, of one or more ... currencies, commodities, securities ... [or] indices” 7 U.S.C. § 1a(47)(i)(A).

registration as a futures commission merchant (“FCM”) in violation of Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2012);

- d. Advised others, for compensation or profit, as to the value of or the advisability of trading in any swap, i.e., binary option, or commodity option without registration as a commodity trading advisor (“CTA”) in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012);
- e. Committed fraud in connection with commodity options transactions in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.4, 17 C.F.R. § 32.4 (2018);
- f. Engaged in fraud while acting as a CTA, including but not limited to fraud in advertising by a CTA, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012), and Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2018); and
- g. Engaged in fraud in connection with swap transactions, i.e., binary options, in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2018).

42. The Defaulting Citrades Defendants were part of a common enterprise to defraud customers through the Citrades website; accordingly, the Defaulting Citrades Defendants are jointly and severally liable for one another’s

violations of the Act and Regulations, as well as for the other Citrades Defendants' violations of the Act and Regulations.

43. Unless restrained and enjoined by this Court, there is a reasonable likelihood that the Defaulting Citrades Defendants will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act and Regulations.

II. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

44. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), the Defaulting Citrades Defendants are permanently restrained, enjoined, and prohibited from directly or indirectly:

- a. Engaging in off-exchange swaps transactions with retail customers, i.e., binary options trading, in violation of Section 2(e) of the Act, 7 U.S.C. § 2(e) (2012);
- b. Offering or entering into off-exchange transactions in commodity options in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), and Regulation 32.2, 17 C.F.R. § 32.2 (2018);
- c. Soliciting or accepting orders, and accepting money, for commodity options or swap transactions, i.e., binary options,

without registration as an FCM in violation of Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2012);

- d. Advising others, for compensation or profit, as to the value of or the advisability of trading in any swap, i.e., binary option, or commodity option without registration as a CTA in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012);
- e. Committing fraud in connection with commodity options transactions in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b), and Regulation 32.4, 17 C.F.R. § 32.4 (2018);
- f. Engaging in fraud while acting as a CTA, including but not limited to fraud in advertising by a CTA, in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012), and Regulation 4.41(a), 17 C.F.R. § 4.41(a) (2018);
- g. Engaging in fraud in connection with swap transactions, i.e., binary options, in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2018).

45. The Defaulting Citrades Defendants are permanently restrained, enjoined, and prohibited from directly or indirectly:

- a. 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));

- b. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2018)), for their own accounts or for any account in which they have a direct or indirect interest;
- c. Having any commodity interests traded on their behalf;
- d. 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;
- e. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- f. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2018); and/or
- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2018)), agent, or any other officer or employee of any person (as that term is defined in 7 U.S.C. § 1a(38)), registered, exempted from registration, or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9).

III. RESTITUTION AND CIVIL MONETARY PENALTY

A. Restitution

46. The Defaulting Citrades Defendants shall pay, jointly and severally, restitution in the amount of four million four hundred eighty thousand four hundred thirty-two dollars and sixty cents (\$4,480,432.60) (“Restitution Obligation”). If the Restitution Obligation is not paid in full within ten days of the date of the entry of this Order, post-judgment interest shall accrue on the Restitution 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).

47. Kenneth Dante Murena of DAMIAN & VALORI LLP, previously appointed by the Court as receiver in the above-captioned action (“Receiver”), shall receive restitution payments from the Defaulting Citrades Defendants and make distributions as set forth below. Because the Receiver is acting as an officer of this Court in performing these services, the Receiver shall not be liable for any action or inaction arising from the appointment of the Receiver, other than actions involving fraud.

48. The Defaulting Citrades Defendants shall make Restitution Obligation payments, and any post-judgment interest payments, under this Order to the Receiver in the name “Citrades Litigation Settlement Fund” and shall send such payments by electronic funds transfer, or by U.S. postal

money order, certified check, bank cashier's check, or bank money order, to Kenneth Dante Murena of DAMIAN & VALORI LLP, as Receiver in *CFTC v. Scharf, et al.*, No. 3:17-cv-00774-TJC-MCR (M.D. Fla.), 1000 Brickell Ave., Suite 1020, Miami, FL 33131, under cover letter that identifies the paying defendant and the name and docket number of this proceeding. The Defaulting Citrades Defendants 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.

49. The Receiver shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Defaulting Citrades Defendants' customers identified by the Commission or may defer distribution until such time as the Receiver deems appropriate. In the event that the amount of Restitution Obligation payments to the Receiver are of a *de minimis* nature such that the Receiver determines that the administrative cost of making a distribution to eligible customers is impractical, the Receiver may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Receiver shall forward to the Commission following the instructions for civil monetary penalty payments set forth below.

50. The Defaulting Citrades Defendants shall cooperate with the Receiver as appropriate to provide such information as the Receiver deems necessary and appropriate to identify the Defaulting Citrades Defendants' customers to whom the Receiver, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. The Defaulting Citrades Defendants shall execute any documents necessary to release funds that they have in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

51. The Receiver shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to the Defaulting Citrades Defendants' customers during the previous year. The Receiver shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

52. Upon the termination of the receivership estate, the Receiver shall provide the Commission with a report detailing the disbursement of funds to the Defaulting Citrades Defendants' customers. The Receiver shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading

Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

53. The amounts payable to each customer shall not limit the ability of any customer from proving that a greater amount is owed from the Defaulting Citrades Defendants or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any customer that exist under state or common law.

54. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of the Defaulting Citrades Defendants who suffered a loss is explicitly made an intended third-party beneficiary of this Order and may seek to enforce obedience with this Order to obtain satisfaction of any portion of the restitution that has not been paid by the Defaulting Citrades Defendants, to ensure continued compliance with any provision of this Order, or to hold the Defaulting Citrades Defendants in contempt for any violation of any provision of this Order.

55. To the extent that any funds accrue to the U.S. Treasury for satisfaction of the Defaulting Citrades Defendants' Restitution Obligation, such funds shall be transferred to the Receiver for disbursement in accordance with the procedures set forth in Section III.B.

B. Civil Monetary Penalty

56. The Defaulting Citrades Defendants shall pay, jointly and severally, a civil monetary penalty in the amount of thirteen million four hundred forty one thousand two hundred ninety-four dollars and eighty cents (\$13,441,294.80) (“CMP Obligation”). If the CMP Obligation is not paid in full within ten days of the date of the 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).

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

C. Provisions Related to Monetary Sanctions

58. Partial Satisfaction: Acceptance by the Commission or the Receiver of any partial payment of the Defaulting Citrades Defendants' Restitution Obligation or CMP Obligation shall not be deemed a waiver of their 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.

59. Asset Freeze: On August 10, 2017, the court entered an asset freeze order prohibiting the transfer, removal, dissipation and disposal of the Defaulting Citrades Defendants' assets ("Asset Freeze Order"). The court hereby lifts the Asset Freeze Order.

60. All payments by the Defaulting Citrades Defendants, regardless of whether the assets are currently held by the Receiver, shall first be applied to the Defaulting Citrades Defendants' restitution obligations before being applied to their civil monetary penalty obligations.

IV. MISCELLANEOUS PROVISIONS

61. Notice: All notices required to be given by any provision in this Order shall be sent certified mail, return receipt requested, as follows:

Notice to Commission:

Scott R. Williamson, Acting Deputy Director
Commodity Futures Trading Commission
525 W. Monroe St.
Suite 1100
Chicago, IL 60661
Tel. (312) 596-0700
Fac. (312) 596-0714
swilliamson@cftc.gov

Notice to the Receiver:

Kenneth Dante Murena
DAMIAN & VALORI LLP
1000 Brickell Ave.
Suite 1020
Miami, FL 33131
Tel. (305) 371-3960
Fac. (305) 371-3965
kmurena@dvllp.com

All such notices to the Commission or the Receiver shall reference the name and docket number of this action.

62. **Invalidation:** If any provision of this Order or if the application of any provision is held invalid, then the remainder of this Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

63. **Continuing Jurisdiction of this Court:** This Court shall retain jurisdiction of this action to ensure compliance with this Order and for all other purposes related to this action, including any motion by the Defaulting Citrades Defendants to modify or for relief from the terms of this Order.

64. **Injunctive and Equitable Relief Provisions:** The injunctive and equitable relief provisions of this Order shall be binding upon the Defaulting Citrades Defendants, upon any person under the authority or control of any of the Defaulting Citrades Defendants, and upon any person who receives actual notice of this Order, by personal service, e-mail, facsimile, or otherwise insofar as he or she is acting in active concert or participation with the Defaulting Citrades Defendants.

DONE AND ORDERED in Jacksonville, Florida this 25th day of April, 2019.



TIMOTHY J. CORRIGAN
United States District Judge

jb

Copies:

Counsel of record