

Kathleen Banar, Chief Trial Attorney
(IL Bar No. 6200597)
Elizabeth Pendleton, Senior Trial Attorney
(IL Bar No. 6282050)
David Slovick, Senior Trial Attorney
(IL Bar No. 6257290)
Margaret Aisenbrey, Trial Attorney
(Mo Bar No. 59560)
U.S. Commodity Futures Trading
Commission
1155 21 St. NW
Washington, DC 20581
kbanar@cftc.gov, lpendleton@cftc.gov,
dslovick@cftc.gov, maisenbrey@cftc.gov
(202) 418-5335
(202) 418-5987 (facsimile)

Blaine T. Welsh (NV Bar No. 4790)
Assistant United States Attorney
United States Attorney's Office
333 Las Vegas Boulevard, Suite 5000
Las Vegas, Nevada 89101
blaine.welsh@usdoj.gov
(702) 388-6336
(702) 388-6787 (facsimile)

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

<hr/>)	
U.S. COMMODITY FUTURES TRADING)	
COMMISSION,)	
)	
	Plaintiff,)	
)	
	v.)	
)	Civil Action No.
)	
BANC DE BINARY LTD. (A/K/A E.T.)	
BINARY OPTIONS LTD.),)	
)	
	Defendant.)	
<hr/>)	

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF
AND FOR CIVIL MONETARY PENALTIES UNDER THE
COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS**

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

I. SUMMARY

1. The U.S. Commodity Futures Trading Commission is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Commodity Exchange Act (“Act” or “CEA”) and the Commission Regulations (“Regulations”) promulgated thereunder. The basis of federal jurisdiction in this matter is that the causes of action alleged herein arise under a federal statute. As set forth below, during the period from at least May 2011 through at least March 2013 (“Relevant Period”), defendant Banc de Binary Ltd. (a/k/a E.T. Binary Options, Ltd.) (“Banc de Binary” or “Defendant”), by and through its officers, agents, and employees, violated the Commission’s ban on off-exchange trading of commodity option contracts (“options” or “binary options”) as set forth in the Act, 7 U.S.C. §§ 1 *et seq.* (2012) and the Regulations, 17 C.F.R. §§ 1.1 *et seq.* (2012 and 2013) promulgated thereunder.

2. Specifically, during the Relevant Period, Banc de Binary through its internet trading website www.bbinary.com (and affiliated websites www.bancdebinary.com, and www.bbinary.net) (hereinafter, the “website”) violated Sections 4c(b), 2(e), and 4(a) of the Act, 7 U.S.C. §§ 6c(b), 2(e), and 6(a) (2012), and Regulations 32.2 and 32.11, 17 C.F.R. §§ 32.2 and 32.11 (2012) (repealed June 26, 2012), and Regulation, 17 C.F.R. § 32.2 (2013),¹ by offering to, entering into with, confirming the execution of or maintaining a position in, and soliciting and

¹ On June 26, 2012 Regulations 32.1 to 32.13 (17 C.F.R. §§ 32.1-32.13 (2012)) were repealed and replaced by new Regulations 32.1 to 32.5 (17 C.F.R. §§ 32.1-32.5 (2013)). Since Banc de Binary’s conduct occurred both before and after June 26, 2012, for the purpose of clarity, the Commission will refer to the Part 32 Regulations that were repealed as e.g. “old” Regulation 32.x. When referring to the Part 32 Regulations that became effective on June 26, 2012, the Commission will refer to each Regulation as e.g. “new” Regulation 32.x.

accepting orders (and funds) from U.S. customers, including U.S. customers who were not “eligible contract participants” (“ECPs”), to trade options not excepted or exempted from the Commission’s ban on trading options off-exchange. These include, among others, binary options betting on the prices of wheat, oil, gold, platinum, sugar, coffee, corn, foreign currency (“forex”) pairs, and stock indices.

3. In addition, during the period from July 2011 through at least March 2013, Banc de Binary operated as an unregistered futures commission merchant (“FCM”) and solicited and accepted orders (and funds) from U.S. customers, including U.S. customers who were not ECPs, in violation of Sections 2(c)(2)(B)(iv)(I)(aa) and 4d(a) of the Act, 7 U.S.C. §§ 2(c)(2)(B)(iv)(I)(aa) & 6d(a) (2012) and Regulation 5.3(a)(4)(i)(B), 17 C.F.R. §§ 5.3(a)(4)(i)(B) (2013).

4. By virtue of this conduct and further conduct described below, Defendant has engaged, is engaged, or is about to engage in acts and practices in violations of the Act and the Regulations.

5. Accordingly, pursuant to Sections 2(c)(2) and 6c of the Act, 7 U.S.C. §§ 13a-1 & 2(c)(2) (2012), the Commission brings this action to enjoin Defendant’s unlawful acts and practices and to compel its compliance with the Act and the Regulations, and to further enjoin Defendant from engaging in certain commodity options-related activity in connection with U.S. customers, including through the website.

6. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans in connection with U.S.

customers, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other relief as the Court may deem necessary and appropriate.

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

II. JURISDICTION AND VENUE

8. Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2012), authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of the Act or any rule, regulation, or order thereunder.

9. The Commission has jurisdiction over the conduct and transactions at issue in this case pursuant to Sections 2(c)(2) and 6c of the Act, 7 U.S.C. §§ 2(c)(2) & 13a-1 (2012).

10. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because the acts or practices in violation of the Act and the Regulations have occurred, are occurring, or are about to occur within this District, among other places, and because Defendant currently transacts or transacted business in this District.

III. PARTIES

11. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act and the Regulations promulgated thereunder. The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

12. Defendant **Banc de Binary** is an Israeli and Cypriot company that, during the Relevant Period, held itself out as being headquartered on Wall Street in New York, New York (the “Wall Street Office”). Banc de Binary also purports to have offices in Limassol, Cyprus; Luxemburg, Luxemburg; Istanbul, Turkey; and Paris, France. The website offers binary options for trading to U.S. and foreign customers. It has never been designated as a contract market by the Commission, is not an exempt board of trade, and is not a *bona fide* foreign board of trade pursuant to Section 4(a) and (b) of the Act, 7 U.S.C. §§ 6(a) & (b) (2012). Banc de Binary’s chief executive officer, Oren Shabat Cohen (a/k/a Oren Laurent), resides in Israel and is the registrant for the website www.bbinary.com. Banc de Binary has been licensed as an investment firm in Cyprus since December 2012.

IV. FACTS

A. The Website

13. The website is an internet trading platform through which Banc de Binary solicits, accepts money from, and executes trades with U.S. customers to trade binary options. Through the website, customers buy or sell binary “call” or “put” options that allow them to predict whether the price of a certain “asset” will go “up” or “down” at a future date and/or time.

14. During the Relevant Period, the website offered for purchase to U.S. customers, and Banc de Binary was the counterparty to the customers’ transactions, binary options on dozens of “assets,” including commodities (*e.g.*, wheat, oil, gold, platinum, sugar, coffee, corn, etc.), forex pairs (*e.g.*, EUR/USD, GBP/USD, USD/JPY, etc.), and stock indices (*e.g.*, S&P 500, NASDAQ futures, etc.).

15. Once customers open and fund accounts through the website, customers execute trades by selecting a particular asset on the website and predicting if that asset's current price will go up or down on a date and time certain. For example, customers who predict that the price of oil will rise above the then-current price listed on the website on a specific future expiration date or time, execute a "Call Option" by clicking the "UP" button on the website. Conversely, customers who predict that the price of oil will fall below the then-current price listed on the website on a specific future expiration date or time, execute a "Put Option" by clicking the "DOWN" button on the website.

16. Customers may execute trades from between \$1 to \$8,000, and may pick the date and time of contract expiration. The website also lists, by "asset" or contract, the "Payout" or "return" should the predicted event occur.

17. During the Relevant Period, U.S. customers opened trading accounts on the website, which they accessed in the U.S., and traded binary options. The options traded included, but were not limited to, predictions about future price changes of, among other things, coffee, gold, the US dollar/Japanese Yen forex pair, the Euro/Japanese Yen forex pair, and the S&P 500 index.

18. During the Relevant Period, U.S. customers initiated and executed these options trades on the website through computer terminals located in the U.S. Also during the Relevant Period, Banc de Binary made solicitations to customers in the U.S. and confirmed the execution of U.S. customers' trades via the website, emails, and other communications to U.S. customers.

19. To fund their Banc de Binary trading accounts and make the trades, U.S. customers transferred funds from the U.S. to Banc de Binary by credit card, wire transfer, check

or third party payment systems (*e.g.*, MoneyBookers E-wallet, Alertpay E-wallet, etc.) to foreign bank accounts maintained in the name of Banc de Binary or over which Banc de Binary had beneficial control and interest.

20. According to representations on the website, Banc de Binary takes the other side of each and every transaction, *i.e.*, operates as the counterparty to every binary options transaction executed through the website, including transactions with U.S. customers.

21. The binary options offered on the website to U.S. customers were not excepted or exempted from the Commission's ban on trading options off-exchange.

22. Throughout the Relevant Period, Banc de Binary traded and continues to trade with U.S. customers who are not ECPs. U.S. users of the website were not required to submit any information about their net worth, assets, or prior trading experience to open a trading account on the website, nor were U.S. users of the website required to provide any such information prior to trading binary options on the website. Also during the Relevant Period, Banc de Binary offered, solicited and accepted orders for option contracts from U.S. customers, and executed trades with U.S. customers, without inquiring into or confirming such customers' net worth or prior trading history. Finally, Banc de Binary accepted money, securities, or property to margin, guarantee, or secure the options transaction engaged in by their non-ECP customers.

23. Banc de Binary is not a designated contract market, exempt board of trade or bona fide foreign board of trade, and has never been registered with the CFTC in any capacity.

B. The Bonus Program

24. During the Relevant Period, in addition to the website, Banc de Binary and its agents, employees, and brokers, some of whom told U.S. customers that they work in the Wall Street Office, also actively solicited U.S. customers via telephone, emails, and other communications to fund and/or increase the funding in their Banc de Binary trading accounts, to purchase trading “signals” from Banc de Binary and/or its brokers, and to participate in Banc de Binary’s “bonus” programs. These solicitations occurred in the U.S.

25. Through the website and these other communications, Banc de Binary solicited U.S. customers to sign up for “bonus” programs whereby Banc de Binary claimed it would provide a certain “deposit match” amounting to a specified percentage of customer funds. For example, according to the website, if the company “offers you a 50% deposit match of up to \$50,000, it means that if you open a new real trading account and make a first deposit of \$1,200, Banc [d]e Binary will instantly fund your account with an additional \$600 that will go straight to your trading balance allowing you to trade with \$1800 instead of the \$1,200 you initially deposited.” The website claims that this bonus “gives you great value and extra trading leverage.” The “terms and conditions” on the website note that, upon accepting the bonus, customers are prohibited from withdrawing funds from their trading account, including apparently their own funds initially invested, unless and until the customer trades at least 20 times the value of his or her trading account, or, in the example provided above, \$36,000 (*i.e.*, \$1,200 plus \$600 multiplied by 20 = \$36,000).

26. Certain U.S. customers that traded binary options through the website signed up for the bonus program.

27. The transactions described in paragraphs 24-26 were leveraged or margined by Banc de Binary.

V. CHARGES

COUNT ONE

VIOLATIONS OF SECTION 4c(b) OF THE ACT
7 U.S.C. § 6c(b) (2012)

and

OLD REGULATIONS 32.2 and 32.11, 17 C.F.R. §§ 32.2 & 32.11 (2012)
(Repealed June 26, 2012)

For the period May 2011 through June 25, 2012

Illegal Off-Exchange Options Trading

28. Paragraphs 1 through 27 are re-alleged and incorporated herein by reference.

29. Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), makes it unlawful 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, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”, contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.

30. Old Regulation 32.2, 17 C.F.R. § 32.2 (2012) (repealed June 26, 2012), provides that, notwithstanding the requirements of old Regulation 32.11, “no person may offer to enter into, confirm the execution of, or maintain a position in, any transaction” in any agricultural commodity, including the agricultural commodities identified in Paragraph 14 and 17, above, unless otherwise exempt under old Regulation 32.13, 17 C.F.R. § 32.13 (2012) (repealed June 26, 2012).

31. Old Regulations 32.11(a) and (b), 17 C.F.R. § 32.11(a) & (b) (2012) (repealed June 26, 2012), provide, in relevant part, that “it shall be unlawful . . . for any person to solicit or accept orders for, or to accept money, securities or property in connection with, the purchase or sale of any commodity option, or to supervise any person or persons so engaged,” unless the commodity option transaction is exempt under [old] Regulation 32.4, or is “conducted on or subject to the rules of a contract market or a foreign board of trade in accordance with the provisions of section 4c of the Act and any rule, regulation or order promulgated thereunder.” 17 C.F.R. § 32.11(a) & (b) (2012) (repealed June 26, 2012).

32. As further described in Paragraphs 13-23, above, during the period from May 2011 through June 25, 2012, Banc de Binary violated Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), and old Regulations 32.2 and 32.11, 17 C.F.R. §§ 32.2 and 32.11 (2012) (repealed June 26, 2012), by offering or entering into, confirming the execution of trades, maintaining a position in, and/or soliciting and accepting orders (and funds) from U.S. customers to trade, binary option contracts – including agricultural commodities – not excepted or exempted from the Commission’s ban on trading options off-exchange, including with U.S. customers that are not ECPs. None of Banc de Binary’s transaction occurred on a designated contract market, an exempt board of trade, or a *bona fide* foreign board of trade.

33. Defendant is not exempt from the requirements of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), pursuant to either old Regulations 32.4(a) or (b), or 32.13, 17 C.F.R. §§ 32.4(a) & (b) and 32.13 (2012) (repealed June 26, 2012).

34. The acts of Banc de Binary’s agents and employees undertaken on Banc de Binary’s behalf occurred within the scope of their employment with Banc de Binary. Banc de

Binary is therefore liable for its agents' and employees' acts, omissions, or failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2012).

35. Each and every act by Banc de Binary in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), and old Regulations 32.2 and 32.11, 17 C.F.R. §§ 32.2 and 32.11 (2012), (repealed June 26, 2012), including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), and old Regulation 32.2 and 32.11, 17 C.F.R. §§ 32.2 and 32.11 (2012) (repealed June 26, 2012).

COUNT TWO

VIOLATIONS OF SECTIONS 4c(b) and 2(e) OF THE ACT
7 U.S.C. §§ 6c(b) and 2(e) (2012)

and

NEW REGULATION 32.2, 17 C.F.R. § 32.2 (2013)

For the period October 12, 2012 through at least March 2013

Illegal Off-Exchange Options Trading

36. Paragraphs 1 through 35 are re-alleged and incorporated herein by reference.

37. On July 21, 2010, Congress amended the Act by enacting the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"), 7 U.S.C. § 1 *et seq.* (2012), which, among other things, expanded and clarified the CFTC's jurisdiction over swaps. As relevant here, Dodd-Frank defined an option as a swap, with the exception of options subject to Sections 2(c)(2)(C) and 2(c)(2)(D) of the Act, 7 U.S.C. §§ 2(c)(2)(C) & 2(c)(2)(D) (2012). Dodd-Frank became effective on July 16, 2011.

38. Section 1a(47)(i)(A) of the Act, 7 U.S.C. § 1a(47)(i) (2012), defines a “swap” – unless otherwise excluded under Section 1a(47)(i)(B) of the Act – to include “any agreement, contract or transaction . . . that is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measure, or other financial or economic interests or property of any kind.”

39. On June 26, 2012, Part 32 of the Regulations was repealed and a new Part 32, 17 C.F.R. Part 32 (2013) went into effect. New Regulation 32.2, 17 C.F.R. § 32.2 (2013), makes it unlawful for

any person or group of persons to offer to enter into, enter into, confirm the execution of, maintain a position in, or otherwise conduct activity related to any transaction in interstate commerce that is a commodity option transaction, unless: (a) Such transaction is conducted in compliance with and subject to the provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap

40. Section 2(e) of the Act , 7 U.S.C. § 2(e) (2012) makes it unlawful for

any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market under section 5.

41. Until October 12, 2012, Commission granted exemptive relief to individuals and entities who were engaging in certain swaps (as relevant here, options) from having to comply with certain regulatory requirements of Dodd-Frank, but only until the CFTC and the Securities and Exchange Commission (“SEC”) jointly issued, as required by Dodd-Frank, “product definitions” further defining the term swap. On October 12, 2012, the CFTC and SEC jointly issued the “products definitions.” *See* 77 Fed. Reg. 48208 (2012). Accordingly, Section 2(e) of

the Act, 7 U.S.C. § 2(e) (2012), applies to Banc de Binary's conduct from October 12, 2012 through at least March 2013.

42. As described in Paragraphs 13-23 above, during the period from October, 2012 through at least March 2013, Banc de Binary violated Sections 4c(b) and 2(e) of the Act, 7 U.S.C. §§ 6c(b) & 2(e) (2012), and new Regulation 32.2, 17 C.F.R. § 32.2 (2013), by offering to enter into and entering into binary option transactions – now swaps – with U.S. customers who were not ECPs, and confirming the execution of those binary options not excepted or exempted from the Commission's ban on trading options off-exchange, including with U.S. customers that are not ECPs. None of Banc de Binary's transaction occurred on a designated contract market, an exempt board of trade, or a *bona fide* foreign board of trade.

43. Defendant is not exempt from the requirements of Sections 4c(b) and 2(e) of the Act, 7 U.S.C. §§ 6c(b) & 2(e) (2012), pursuant to new Regulation 32.3, 17 C.F.R. § 32.2 (2013).

44. The acts of Banc de Binary's agents and employees undertaken on Banc de Binary's behalf occurred within the scope of their employment with Banc de Binary. Banc de Binary is therefore liable for its agents' and employees' acts, omissions, or failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Section 1.2 of the Commission's Regulations, 17 C.F.R. § 1.2 (2013).

45. Each and every act by Banc de Binary in violation of Sections 4c(b) and 2(e) of the Act, 7 U.S.C. §§ 6c(b) & 2(e) (2012), and new Regulation 32.2, 17 C.F.R. § 32.2 (2013), including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4c(b) and 2(e) of the Act, 7 U.S.C. §§ 6c(b) & 2(e) (2012), and new Regulation 32.2, 17 C.F.R. § 32.2 (2013).

COUNT THREE

VIOLATIONS OF SECTION 4(a) OF THE ACT
7 U.S.C. § 6(a) (2012)

For the Period July 2011 through at least March 2013

Illegal Off-Exchange Futures Trading

46. Paragraphs 1 through 45 are re-alleged and incorporated herein by reference.

Section 2(c)(2)(D)(i) of the Act, 7 U.S.C. § 2(c)(2)(D) (2012), provides:

Except as provided in clause (ii) [not applicable here], this subparagraph shall apply to any agreement, contract, or transaction in any commodity that is – (I) entered into with, or offered to (even if not entered into with), a person that is not an [ECP] or eligible commercial entity; and (II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

47. Section 2(c)(2)(D)(iii) of the Act, 7 U.S.C. § 2(c)(2)(D)(iii) (2012), as relevant here, further provides that Section 4(a) of the Act, 7 U.S.C. § 6(a) (2012), applies to any agreement, contract, or transaction described in Section 2(c)(2)(D)(i), 7 U.S.C. § 2(c)(2)(D)(i) (2012), “as if the agreement, contract, or transaction” was a futures contract.

48. Section 4(a) of the Act, 7 U.S.C. § 6(a) (2012), as relevant here, makes it unlawful for any person

to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories, or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale” a futures contract “(other than a contract which is made on or subject to the rules of a board of trade, exchange, or market located outside of the United States, its territories or possessions) unless –

(1) such transaction is conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity;

- (2) such contract is executed or consummated by or through a contract market; and
- (3) such contract is evidenced by a record

49. As further described at Paragraphs 24-27, above, during the period from July, 2011 through at least March 2013, Banc de Binary violated Section 4(a) of the Act, 7 U.S.C. § 6(a) (2012), because it 1) was not designated or registered as a contract market or derivatives transaction execution facility and its contracts were not executed or consummated by or through a contract market; 2) offered to enter into, entered into, confirmed the execution of, and conducted business in the U.S.; 3) for the purpose of soliciting or accepting orders for; 4) off-exchange leveraged or margined retail commodity transactions; 5) with U.S. customers; 6) who are not ECPs (*see* Section 1(a)(18), 7 U.S.C. § 1(a)(18) (2012)); or 7) eligible commercial entities (*see* Section 1(a)(17), 7 U.S.C. § 1(a)(17) (2012)).

50. Defendant is not exempt from the requirements of Section 4(a), 7 U.S.C. § 6(a) (2012), pursuant to Section 4(c) of the Act, 7 U.S.C. § 6(c) (2012).

51. The acts of Banc de Binary's agents and employees undertaken on Banc de Binary's behalf occurred within the scope of their employment with Banc de Binary. Banc de Binary is therefore liable for its agents' and employees' acts, omissions, or failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2013).

52. Each and every act by Banc de Binary in violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2012), including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4(a) of the Act, 7 U.S.C. § 6(a) (2012).

COUNT FOUR

**VIOLATION OF SECTIONS 4d(a) and 2(c)(2)(B)(iv)(I)(aa) OF THE ACT
7 U.S.C. §§ 6d(a) and 2(c)(2)(B)(iv)(I)(aa) (2012)**

and

REGULATION 5.3(a)(4)(i)(B), 17 C.F.R. § 5.3(a)(4)(i)(B) (2013)

July 2011 through at least March 2013

Failure To Register As An FCM

53. Paragraphs 1 through 52 are re-alleged and incorporated herein by reference.

54. The Act sets out the definition of an FCM in Section 1(a)(28), 7 U.S.C. § 1(a)(28) (2012), for the period on or after July 16, 2011. Banc de Binary meets this definition of an FCM.

55. Section 4d(a) of the Act, 7 U.S.C. § 6d(a) (2012), as relevant here, makes it unlawful for “any person to be a futures commission merchant unless – (1) such person shall have registered, under this Act, with the Commission as such futures commission merchant and such registration shall not have expired nor been suspended nor revoked”

56. Section 2(c)(2)(B)(iv)(I)(aa) of the Act, 7 U.S.C. § 2(c)(2)(B)(iv)(I)(aa) (2012), as relevant here, states that an FCM cannot solicit or accept orders from non ECPs in connection with agreements, contracts or transaction involving forex options.

57. Regulation 5.3(a)(4)(i)(B), 17 C.F.R. § 5.3(a)(4)(i)(B) (2012), requires that all FCMs who solicit or accept orders from any person that is not an ECP in connection with any retail forex transaction must be registered.

58. As further described at Paragraphs 13-27, above, during the period from July 16, 2011 through at least March 2013, Banc de Binary operated as an FCM by (i) soliciting and accepting orders for the purchase or sale of swaps, retail forex transactions, retail commodity

transactions, and/or commodity options, (ii) acting as a counterparty to retail commodity options transactions, and (iii) accepting money, securities, or property to margin, guarantee, or secure any trades or contracts that resulted therefrom. Banc de Binary engaged in the transactions described in (i)-(iii) with non-ECPs.

59. Banc de Binary has never been registered with the Commission as an FCM, or in any other capacity, and is not exempt from the requirements of Section 4d(a) of the Act, 7 U.S.C. § 6d(a) (2012).

60. By virtue of this conduct, Banc de Binary violated Sections 4d(a) and 2(c)(2)(B)(iv)(I)(aa) of the Act, 7 U.S.C. §§ 6d(a) and 2(c)(2)(B)(iv)(I)(aa) (2012), and Regulation 5.3(a)(4)(i)(B), 17 C.F.R. § 5.3(a)(6)(i) (2013).

61. The acts of Banc de Binary's agents and employees undertaken on Banc de Binary's behalf occurred within the scope of their employment with Banc de Binary. Banc de Binary is therefore liable for its agents' and employees' acts, omissions, or failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2013).

62. Each and every act by Banc de Binary in violation of Sections 4d(a) and 2(c)(2)(B)(iv)(I)(aa) of the Act, 7 U.S.C. §§ 6d(a) and 2(c)(2)(B)(iv)(I)(aa) (2012), and Regulation 5.3(a)(4)(i)(B), 17 C.F.R. § 5.3(a)(6)(i) (2012), is alleged as a separate and distinct violation of Sections 4d(a) and 2(c)(2)(B)(iv)(I)(aa) of the Act, 7 U.S.C. §§ 6d(a) and 2(c)(2)(B)(iv)(I)(aa) (2012) and Regulation 5.3(a)(4)(i)(B), 17 C.F.R. § 5.3(a)(6)(i) (2013).

VI. RELIEF REQUESTED

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

- A. An order finding that Banc de Binary violated Sections 4c(b), 4(a), 4d(a), 2(e), and 2(c)(2)(B)(iv)(I)(aa) of the Act, 7 U.S.C. §§ 6c(b), 6(a), 6d(a), 2(e) and 2(c)(2)(B)(iv)(I)(aa) (2012); old Regulations 32.2 and 32.11, 17 C.F.R. §§ 32.2 and 32.11 (2012) (repealed June 26, 2012); new Regulation 32.2, 17 C.F.R. § 32.2 (2013); and Regulation 5.3(a)(4)(i)(B), 17 C.F.R. § 5.3(a)(4)(i)(B) (2013);
- B. An order of permanent injunction prohibiting Banc de Binary, and any other person or entity associated with it, from engaging in conduct in violation of Sections 4c(b), 4(a), 4d(a) 2(e), and 2(c)(2)(B)(iv)(I)(aa) of the Act, 7 U.S.C. §§ 6c(b), 6(a), 6d(a) 2(e), and 2(c)(2)(B)(iv)(I)(aa) (2012); new Regulation 32.2, 17 C.F.R. § 32.2 (2013); and Regulation 5.3(a)(4)(i)(B), 17 C.F.R. § 5.3(a)(4)(i)(B) (2013);
- C. An order of permanent injunction prohibiting Defendant and any of its agents, servants, employees, assigns, attorneys, and persons in active concert or participation with Defendant, including any successor thereof, from, directly or indirectly:
- i. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the CEA, 7 U.S.C. § 1a (2012));
 - ii. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh) (2013)) (“commodity options”), security futures products, foreign currency (as described in Sections

2(c)(2)(B) and 2(c)(2)(C)(i) of the CEA, 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) (2012) and/or swaps (as that term is defined in Section 1a(47) of the CEA, 7 U.S.C. § 1a(47) (2012), and as further defined by Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx) (2013)) for its own personal account or for any account in which it has a direct or indirect interest;

- iii. Having any commodity futures, options on commodity futures, commodity options, security futures products, forex contracts, and/or swaps traded on its behalf;
- iv. 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 futures, options on commodity futures, commodity options, security futures products, forex contracts and/or swaps;
- v. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, forex contracts, and/or swaps;
- vi. 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) (2013);
and
- vii. Acting as a principal (as that term is defined in Regulation 3.1(a), 17

C.F.R. § 3.1(a) (2013)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the CEA, 7 U.S.C. § 1a (2013)) 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) (2013).

D. An order of permanent injunction prohibiting Banc de Binary, and any other person or entity associated with it or its website, from operating the website while in violation of Sections 4c(b), 4(a), 4d(a), 2(e), and 2(c)(2)(B)(iv)(I)(aa) of the Act, 7 U.S.C. §§ 6c(b), 6(a), 6d(a), 2(e), and 2(c)(2)(B)(iv)(I)(aa) (2012); new Regulation 32.2, 17 C.F.R. § 32.2 (2013); and Regulation 5.3(a)(4)(i)(B), 17 C.F.R. § 5.3(a)(4)(i)(B) (2013);

E. An order requiring Banc de Binary, and any successors to the company, to disgorge to any officer appointed or directed by the Court all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues, and trading profits derived, directly or indirectly, from acts or practices that constitute violations of the Act and the Regulations, including pre- and post-judgment interest;

F. An order directing Defendant to make full restitution to every person or entity whose funds Defendant received or caused another person or entity to receive as a result of acts and practices that constituted violations of the ACT and the Regulations, as described herein, and pre- and post-judgment interest thereon from the date of such violations;

G. An order directing Banc de Binary and any successors to either company, to rescind, pursuant to such procedures as the Court may order, all contracts and

agreements, whether implied or express, entered into between them and any of the U.S. customers (and customers within U.S. territories) whose funds were received by it as a result of the acts and practices which constituted violations of the Act and the Regulations as described herein;

H. An order requiring Banc de Binary to pay civil monetary penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of: (1) triple the monetary gain to Defendant for each violation of the Act and the Regulations; or (2) \$140,000 for each violation committed, plus pre- and post-judgment interest;

I. An order requiring Banc de Binary to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

J. Enter an Order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated: June 5, 2013

Respectfully Submitted,

ATTORNEYS FOR PLAINTIFF
U.S. COMMODITY FUTURES
TRADING COMMISSION
1155 21st Street NW
Washington, D.C. 20581

/s/ Kathleen Banar
Kathleen Banar
Chief Trial Attorney
(202) 418-5335
(202) 418-5987 (facsimile)
kbanar@cftc.gov
(IL Bar No. 6200597)

Elizabeth Pendleton
Senior Trial Attorney

(312) 596-0629
(312) 596-0714 (facsimile)
ependleton@cftc.gov
(IL Bar No. 6282050)

David S. Slovick
Senior Trial Attorney
(202) 418-5451
(202) 418-5987 (facsimile)
dslovick@cftc.gov
(IL Bar No. 6257290)

Margaret Aisenbrey
Trial Attorney
(816) 960-7749
(816) 960-7751 (facsimile)
maisembrey@cftc.gov
(Mo Bar No. 59560)

Blaine T. Welsh (NV Bar No. 4790)
Assistant United States Attorney
United States Attorney's Office
333 Las Vegas Boulevard, Suite 5000
Las Vegas, Nevada 89101
blaine.welsh@usdoj.gov
(702) 388-6336
(702) 388-6787 (facsimile)