EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
CASE NO. 20-Civ-21887-GPD

U.S. COMMODITY FUTURES TRADING COMMISSION, **Plaintiff,** **v.** **DANIEL FINGERHUT, DIGITAL PLATINUM INC., DIGITAL PLATINUM LTD., HUF MEDIYA, TAL VALARIOLA AND ITAY BARAK** **Defendants.**	**CONSENT ORDER FOR PERMANENT INJUNCTION, AND OTHER STATUTORY AND EQUITABLE RELIEF AGAINST DIGITAL PLATINUM LTD., TAL VALARIOLA AND ITAY BARAK**

I. INTRODUCTION

On May 5, 2020, Plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC") filed a Complaint against Defendants Daniel Fingerhut ("Fingerhut"), Digital Platinum Ltd ("DPL"), Digital Platinum, Inc. ("DPI"), Huf Mediya, Tal Valariola ("Valariola"), and Itay Barak ("Barak") (collectively "Defendants"), and Relief Defendant Aicel Carbonero, seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1-26 (2018), and the Commission's Regulations ("Regulations") promulgated thereunder, 17 C.F.R. pts. 1-190 (2020). (ECF No. 1.) On May 6, 2020, the Commission sought the appointment of a temporary receiver and entry of a preliminary injunction. (ECF Nos.12, 13.) The Court entered a Temporary Receiver Order ("TRO") on May 8, 2020, ordering appointment of Melanie Damian of Damian & Valori LLP, 1000 Brickell Ave., Suite 1020, Miami, FL 33131, as Temporary Receiver, with full powers of an equity receiver, an accounting, and other equitable relief. (ECF No. 33.) The Commission filed an Amended

Complaint on June 12, 2020. (ECF No. 101.)[1] The Commission also sought a statutory restraining order ("SRO"), *see* Section 6c(b) of the Act, 7 U.S.C. § 13a-1(b) (2018), which the Court granted on July 13, 2020. (ECF Nos. 58, 129.) On January 7, 2021, the Court entered an Order for Preliminary Injunction and Other Ancillary Relief Against the Defendants.[2] (ECF No. 199.)

II. CONSENTS AND AGREEMENTS

To effect settlement of all charges alleged in the Amended Complaint against Defendants Digital Platinum Ltd., Tal Valariola and Itay Barak (collectively the "Israeli Defendants"), without a trial on the merits or any further judicial proceedings, the Israeli Defendants:

1. Consent to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against the Israeli Defendants ("Consent Order");

2. Affirm that they have read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;

3. Acknowledge service of the summons and Amended Complaint;

4. Admit the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018);

[1] The Amended Complaint did not alter the allegations against the Israeli Defendants, but rather addressed service of process issues.

[2] The CEA contemplates entry of "permanent or temporary injunction[s]" as well as "restraining order[s]." 7 U.S.C. § 13a–1(b). Only a preliminary injunction can stay in place until a trial on the merits. *Id.*; *see* Fed. R. Civ. P. 65. Huf Mediya had not yet been served and was not included within the scope of the Preliminary Injunction.

5. Admit the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act;

6. Admit that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e);

7. Waive:

(a) Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2018) and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2020), relating to, or arising from, this action;

(b) Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–53, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this action;

(c) Any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and

(d) Any and all rights of appeal from this action;

8. Consent to the continued jurisdiction of this Court over them for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if the Israeli Defendants now or in the future reside outside the jurisdiction of this Court;

9. Agree that they will not oppose enforcement of this Consent Order on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and hereby waives any objection based thereon;

10. Agree that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Amended Complaint, or creating or tending to create the impression that the

Amended Complaint and/or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect their: (a) testimonial obligations; or (b) right to take legal positions in other proceedings to which the Commission is not a party. The Israeli Defendants shall comply with this agreement, and shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.

11. Consent to the entry of this Consent Order without admitting or denying the allegations of the Amended Complaint or any findings or conclusions in this Consent Order, except as to jurisdiction and venue, which they admit for purposes of this action;

12. Consent to the use of the findings and conclusions in this Consent Order in this proceeding and, subject to paragraph 13, below, in any other proceeding brought by the Commission or the Receiver or to which the Commission or the Receiver is a party or claimant, and agree that they shall be taken as true and correct and be given preclusive effect therein, without further proof;

13. Do not consent, however, to the use of this Consent Order, or the findings and conclusions herein, as the sole basis for any other proceeding brought by the Commission or the Receiver, or to which the Commission or Receiver is a party, other than a: statutory disqualification proceeding, proceeding in bankruptcy, or receivership, or proceeding to enforce the terms of this Order;

14. Agree to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 60 of Part VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against them, whether inside or outside the United States; and

15. Agree that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against the Israeli Defendants in any other proceeding, except that as to DPL, leave of Court is necessary to pursue any action against DPL for so long as it remains under the control of the Receiver.

III. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), as set forth herein. The findings and conclusions in this Consent Order are not binding on any other party to this action or on any party to any other action except as set forth in paragraphs 12-13 above.

THE COURT HEREBY FINDS:

A. Findings of Fact

16. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, and the Regulations.

17. Defendant **Itay Barak** ("Barak") is an individual who resides in Tel Aviv, Israel. Barak has never been registered with the Commission in any capacity.

18. Defendant **Tal Valariola** ("Valariola") is an individual who resides in Tel Aviv, Israel. Valariola has never been registered with the Commission in any capacity.

19. Defendant **Digital Platinum Ltd** ("DPL") is an Israeli company with its principal place of business in Tel Aviv, Israel. At all times relevant, Valariola and Barak owned and controlled DPL. DPL has never been registered with the Commission in any capacity.

B. Conclusions of Law

Jurisdiction and Venue

20. This Court possesses jurisdiction over this action pursuant 28 U.S.C. § 1331 (2018) (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (2018) (providing that U.S. district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2018) provides that the Commission may bring actions for injunctive relief or to enforce compliance with the Act or any rule, regulation, or order thereunder in the proper district court of the United States 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 thereunder.

21. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e), because the acts and practices in violation of the Act occurred within this District.

Options Fraud

22. By the conduct described in the Amended Complaint and here, the Israeli Defendants willfully aided and abetted All In Publishing and its principal Timothy Atkinson's (together, "AIP") options fraud, *see* Consent Order of Permanent Injunction and Other Statutory and Injunctive Relief Against Timothy Joseph Atkinson and All In Publishing, LLC, *CFTC v. Atkinson*, No. 18-cv-23992-JEM, (S.D. Fla. May 22, 2019), ECF No. 206, because they: (i) had knowledge of their AIP's intent to commit a violation; and (ii) intentionally assisted the primary wrongdoers. DPL intentionally assisted AIP, which intentionally or recklessly used fraudulent solicitations in emails, websites and fictitious videos promising free access to trading systems to induce prospective customers to open and fund binary options

trading accounts with a recommended broker in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2018), and Commission Regulation 32.4, 17 C.F.R. § 32.4 (2020), so that the Israeli Defendants could earn commissions.

23. By the conduct described in the Amended Complaint, DPL is liable as a principal for Valariola's and Barak's violations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2018), and Regulation 1.2, 17 C.F.R. § 1.2 (2020), because their acts, omissions and/or failures occurred within the scope of their employment or agency with DPL.

24. By the conduct described in the Amended Complaint, Valariola and Barak are liable as control persons of DPL pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2018), because they controlled DPL and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting DPL's violations.

Manipulative & Deceptive Device, Scheme or Artifice

Binary Options Swaps Fraud

25. By the conduct described in the Amended Complaint, the Israeli Defendants' campaigns marketed free access to trading systems for trading swaps, as defined by the Act. The Israeli Defendants intentionally or recklessly used fraudulent solicitations in emails, websites, and fictitious videos promising free access to their trading systems to induce prospective customers to go through their funnel and open and fund binary options trading accounts with their recommended broker to earn commissions.

26. By the conduct described in the Amended Complaint, DPL, between October 2013 and November 2016, willfully aided and abetted AIP's binary options campaigns by supplying certain false sales videos, knowing AIP used similarly materially false or misleading statements in video and email solicitations that it created and disseminated to prospective customers, sharing those solicitations with brokers and encouraging their use in the brokers'

further solicitations, serving as an intermediary with the brokers, supplying the trading systems that did not operate as marketed, and handling the commissions resulting from the fraud. Therefore, pursuant to Section 13(a) of the Act, 7 U.S.C. §13c(a) (2016), DPL is liable for AIP's and its employees' violations of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2018), and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2020).

27. By the conduct described in the Amended Complaint, Valariola and Barak, between October 2013 and November 2016, willfully aided and abetted DPL's violations of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3) within the scope of their employment, office or agency with DPL. DPL is therefore liable for Valariola's and Barak's acts, omissions, and failures constituting violations of 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4 pursuant to 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2.

28. By the conduct described in the Amended Complaint, Valariola and Barak controlled DPL between October 2013 and November 2016. Valariola and Barak failed to act in good faith and/or knowingly induced DPL's violations alleged herein. Valariola and Barak are therefore liable for DPL's violations as controlling persons pursuant to 7 U.S.C. § 13c(b).

Digital Assets Commodity and Swaps Fraud

29. By the conduct described in the Amended Complaint, between November 2016 and August 2018, the Israeli Defendants' campaigns marketed free access to trading systems for trading digital assets, as defined by the Act. The Israeli Defendants intentionally or recklessly used or directed its subsidiary to use fraudulent solicitations in emails, websites, and fictitious videos promising free access to their trading systems to induce prospective customers to go through their funnel and open and fund digital asset trading accounts with their recommended broker to earn commissions.

30. By the conduct described in the Amended Complaint, DPL, between November 2016 and August 2018, through its wholly owned subsidiary, fraudulently solicited prospective customers to open and fund digital asset trading accounts by distributing emails and videos that included materially false or misleading statements, serving as an intermediary with the brokers, supplying the trading systems that did not operate as marketed, and handling the commissions resulting from the fraud. Therefore, DPL violated 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3).

31. By the conduct described in the Amended Complaint, Valariola and Barak, between November 2016 and August 2018, violated 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3) within the scope of their employment, office or agency with DPL. DPL is therefore liable for Valariola's and Barak's acts, omissions, and failures constituting violations of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1)-(3) pursuant to 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. §1.2.

32. By the conduct described in the Amended Complaint, Valariola and Barak controlled DPL between November 2016 and August 2018. Valariola and Barak failed to act in good faith and/or knowingly induced DPL's violations alleged herein during that time period. Valariola and Barak are therefore liable for DPL's violations as controlling persons pursuant to 7 U.S.C. § 13c(b).

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

33. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), the Israeli Defendants are permanently restrained, enjoined and prohibited from directly or indirectly:

a. Using fraudulent solicitations in emails, websites and fictitious videos that promise free access to trading systems to induce prospective customers to open and fund binary options and digital assets trading accounts with a recommended broker so that the Israeli Defendants can earn commissions, in violation of Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2018), and Regulation 32.4, 17 C.F.R. § 32.4 (2020); and

b. Directly or indirectly, in connection with any swap, or contract of sale of any commodity interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly: (1) use or employ, or attempt to use or employ, any manipulative devices, schemes, and artifices to defraud; (2) make, or attempt to make, untrue or misleading statements of a material factor or omit to state material facts necessary in order to make statements made not untrue or misleading; or (3) engage, or attempt to engage, in acts, practices, and courses of business, which operate or would operate as a fraud or deceit upon any person in connection with swap transactions, by using fraudulent solicitations in emails, websites and fictitious sales videos that promise free access to trading systems to induce prospective customers to go through their website funnel and open and fund a binary options and/or digital asset trading accounts with their recommended broker to earn commissions, in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2018), and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2020).

34. The Israeli Defendants are also permanently restrained, enjoined, and prohibited from directly or indirectly:

a. Trading, offering to enter into, entering into, confirming the execution of, maintaining positions in, or otherwise conducting transactions or activities relating to digital assets or any "commodity interest" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2020), which encompasses binary options), to any person or entity residing in the United States or who enters transactions involving those financial products on or subject to the rules of any registered entity (as that term is defined in 7 U.S.C. § 1a(40) (2018));

b. Soliciting, receiving or accepting any funds from any person or entity residing in the United States for the purpose of conducting transactions or activities relating to digital assets or any commodity interest (as that term is defined in 17 C.F.R. § 1.3));

c. Offering autotrading systems or services that purport to trade digital assets or any commodity interest (as that term is defined in 17 C.F.R. § 1.3), to any person or entity residing in the United States or who enters transactions involving those financial products on or subject to the rules of any registered entity (as that term is defined in 7 U.S.C. § 1a(40) (2018));

d. Acting as an affiliate marketer in any capacity that involves the marketing of digital assets or any commodity interest (as that term is defined in 17 C.F.R. § 1.3), to any person or entity residing in the United States or who enters transactions involving those financial products on or subject to the rules of any registered entity (as that term is defined in 7 U.S.C. § 1a(40) (2018));

e. 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) (2020); and/or

f. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2020)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)), registered, exempted from registration or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9).

V. OTHER STATUTORY AND EQUITABLE RELIEF

35. The current Court-appointed Temporary Receiver is hereby appointed Permanent Receiver with respect to the Israeli Defendants' assets, subject to the exemptions below, and is granted the full powers of a federal equity receiver, including without limitation: (i) all powers previously granted to the Temporary Receiver in this Court's Consent Order for Preliminary Injunction and Other Ancillary Relief Against Defendants Digital Platinum Ltd., Tal Valariola and Itay Barak (ECF No. 199); (ii) the right, upon Court approval, to market and sell all assets of the DPL except as noted in Paragraph 58 below; and (iii) the right and discretion to pursue (a) any actions necessary to recover assets, wheresoever located, of the Israeli Defendants and/or of the Receivership Estate, and (b) any actions on behalf of the creditors of the Receivership Estate and/or the Israeli Defendants. However, Valariola and Barak's earnings, "funds, assets, or other property" (as these terms are defined in ECF No. 199) that are considered "exempt" under federal law or the law of the country in which they reside are neither subject to the Permanent Receiver's powers above nor this paragraph. This Consent Order shall not preclude Valariola and Barak from seeking any additional exemptions from the Permanent Receiver's powers above, and shall be without prejudice to Valariola's and Barak's ability to otherwise seek

any exemption from, or modification to, this paragraph; the Commission and the Permanent Receiver reserve the right to oppose any such exemption or modification.

A. Disgorgement

36. The Israeli Defendants shall pay, jointly and severally, disgorgement in the amount of three million dollars ($3,000,000 USD) ("Disgorgement Obligation"), in connection with their violations. If the Disgorgement Obligation is not paid immediately, then post-judgment interest shall accrue on the Disgorgement Obligation beginning on the date of entry of this Consent Order and shall be determined by using the one-month Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2018).

37. The Permanent Receiver shall receive disgorgement payments from the Israeli Defendants and make distributions as set forth below.

38. The Israeli Defendants shall make Disgorgement Obligation payments, and any post-judgment interest payments, under this Consent Order to the Permanent Receiver in the name "DPL Receivership Estate" 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 the Permanent Receiver at the office of Damian & Valori LLP, 1000 Brickell Avenue, Suite 1020, Miami, Florida 33131, under cover letter that identifies the paying Defendant(s) and the name and docket number of this proceeding. The Israeli 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.

39. The CFTC and the Permanent Receiver acknowledge that before the date of this Consent Order, DPL and/or DPL's banking institution(s) delivered to the Receiver, and Receiver received, $1,195,965.82, which amount shall be applied toward the Israeli

Defendants' $3,000,000 Disgorgement Obligation and shall be deemed a partial satisfaction thereof.

40. The CFTC and the Permanent Receiver acknowledge that on or about June 18, 2020, Baker Botts LLP, counsel for Defendants Valariola and Barak, delivered to the Receiver, and the Receiver received, $194,358.60, which amount shall also be applied toward the Israeli Defendants' $3,000,000 Disgorgement Obligation and shall be deemed a partial satisfaction thereof. To the extent that Valariola and Barak's pending motion for release of legal fees, (ECF No. 197,) is granted, any portion of the funds held by Receiver that are paid to Baker Botts LLP shall be excluded from this credit.

41. The Permanent Receiver shall oversee the Disgorgement Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to the Israeli Defendants' customers identified by the Commission or through her investigation and as approved by the Court or may defer distribution until such time as the Permanent Receiver deems appropriate. The Permanent Receiver shall propose a consolidated plan for the distribution of the disgorgement amount to the Court within ninety days of the date of entry of this Order. In the event that the amount of Disgorgement Obligation payments to the Permanent Receiver are of a *de minimis* nature such that the Permanent Receiver determines that the administrative cost of making a distribution to eligible participants is impractical, the Permanent Receiver may, in her discretion, treat such disgorgement payments as civil monetary penalty payments, which the Permanent Receiver shall forward to the Commission following the instructions for civil monetary penalty payments set forth in Part B below.

42. Funds or assets obtained by the Permanent Receiver through settlement with, or disgorgement or clawback proceedings against, third party recipients or transferees of the Israeli Defendants ("clawbacks"), less the Permanent Receiver's costs and fees incurred in obtaining

each respective clawback, shall be applied first toward the Israeli Defendants' $3,000,000 Disgorgement Obligation, and upon satisfaction of the Disgorgement Amount shall thereafter be applied toward the Israeli Defendant's CMP Obligation as defined in paragraph 48 below.

43. Subject to any applicable privilege, the Israeli Defendants shall cooperate with the Permanent Receiver as appropriate to provide such information as the Permanent Receiver deems necessary and appropriate to identify the Israeli Defendants' customers to whom the Permanent Receiver, in her sole discretion, may determine to include in any plan for distribution of any Disgorgement Obligation payments. Subject to any applicable privilege, the Israeli 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 Disgorgement Obligation.

44. Until discharged by the Court, the Permanent Receiver shall also provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds. The Permanent 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.

45. The amounts payable to each participant shall not limit the ability of any participant from proving that a greater amount is owed from the Israeli 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, except that absent leave of Court no action may be initiated against DPL or Melanie E. Damian as the Permanent Receiver of DPL.

46. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each customer of the Israeli Defendants who suffered a loss is explicitly made an intended third-party beneficiary of this Consent Order and may, upon approval by the Permanent Receiver during the Receivership

or otherwise after termination of the Receivership, seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the disgorgement that has not been paid by Israeli Defendants to ensure continued compliance with any provision of this Consent Order and to hold Valariola and Barak in contempt for any violations of any provision of this Consent Order.

47. To the extent that any funds accrue to the U.S. Treasury for satisfaction of the Israeli Defendant's Disgorgement Obligation, such funds shall be transferred to the Permanent Receiver for disbursement in accordance with the procedures set forth above.

B. Civil Monetary Penalty

48. The Israeli Defendants shall pay, jointly and severally, a civil monetary penalty in the amount of three million dollars ($3,000,000 USD) ("CMP Obligation"). If the CMP Obligation is not paid immediately, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the one-month Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2018).

49. The Israeli Defendants shall pay their CMP Obligation 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 Israeli Defendants shall contact Marie Thorne or her successor at the address above to receive payment instructions and shall fully comply with those instructions. The Israeli Defendants shall accompany payment of the CMP Obligation with a cover letter that identifies the Israeli Defendants and the name and docket number of this proceeding. The Israeli 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.

50. With regard to funds accumulated by the Permanent Receiver, the funds shall be distributed first to satisfy the Disgorgement Obligation, and second to satisfy the CMP if funds are available. The Permanent Receiver shall provide written notice in accordance with Paragraph 60 to the Israeli Defendants of any partial and/or complete satisfaction of these obligations.

C. Provisions Related to Monetary Sanctions

51. Partial Satisfaction: Acceptance by the Commission or the Permanent Receiver of any partial payment of the Israeli Defendants' Disgorgement Obligation or CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

52. Within seven (7) days of the Israeli Defendants' satisfaction in full of the $3,000,000 Disgorgement Obligation and the $3,000,000 CMP Obligation ($6,000,000 total combined Monetary Sanctions), the Permanent Receiver shall so notify the Court. As of the date of such notification, any Orders freezing or restraining the Israeli Defendants' assets shall be deemed lifted and extinguished, and the Permanent Receiver's receivership over the Israeli Defendants shall be deemed lifted, extinguished, and dissolved, except to the extent that the

Receiver is involved in the actions needed to distribute such funds to investors. To the extent that further Court order may be required, or deemed necessary or desirable, to effectuate the intent and purpose of this paragraph, the Permanent Receiver shall include with the notice to the Court a motion requesting that the Court lift and extinguish any Orders freezing or restraining the Israeli Defendants' assets, and requesting that the Court lift, extinguish, and dissolve the receivership over the Israeli Defendants. The CFTC agrees to either join in or to not oppose any such motion by the Permanent Receiver.

D. Cooperation of Israeli Defendants

53. Subject to any applicable privilege, the Israeli Defendants shall cooperate fully and expeditiously with the CFTC, including the CFTC's Division of Enforcement, in this action and in any current or future Commission investigation related to the subject matter of this action. As part of such cooperation, subject to any applicable privilege, including but not limited to the Fifth Amendment privilege against self-incrimination, the Israeli Defendants shall comply, to the full extent of their abilities, promptly and truthfully with any reasonable inquiries or requests for information including but not limited to, requests for production of documents and authentication of documents within their possession, custody, or control, shall provide assistance at any trial, proceeding, or investigation related to the subject matter of this action, including but not limited to, requests for testimony, depositions, and/or interviews. Should the CFTC file any additional actions related to the subject matter of this action, the Israeli Defendants are directed to appear in the judicial district in which such actions are pending, or in a suitable judicial district agreed to by the parties, to provide deposition testimony and trial testimony, subject to any applicable privilege, including but not limited to the Fifth Amendment privilege against self-incrimination, should such testimony be necessary. To the extent that any of the foregoing would otherwise require a personal appearance, Israeli Defendants shall be entitled to appear by

live video or, should the permission of a court be required, the Commission, the Receiver, and the respective Israeli Defendants shall move the court jointly for an order authorizing the respective Israeli Defendant to appear by video.

54. The Israeli Defendants shall also cooperate, subject to any applicable privilege, including but not limited to the Fifth Amendment privilege against self-incrimination, and subject to the provisions regarding appearance by video set forth in paragraph 53 above, in any investigation, civil litigation or administrative matter related to, or arising from, this action with the CFTC and the Permanent Receiver.

55. The Israeli Defendants and all other persons or entities served with a copy of this Order shall, subject to any applicable privilege, cooperate fully with all reasonable requests of the Permanent Receiver including transferring funds at the Permanent Receiver's direction and producing records related to the Israeli Defendants' accounts as well as providing such information as the Permanent Receiver deems necessary and appropriate to identify the Israeli Defendants' customers to whom the Permanent Receiver, in her sole discretion, may determine to include in any plan for distribution of any restitution or disgorgement payments.

E. Cooperation of Third Parties

56. During the Receivership, any financial or brokerage institution, business entity, or person that receives actual notice of this Order by personal service or through other means (including without limitation by U.S. Mail, overnight courier, email, or facsimile) and holds, controls, or maintains custody of any account, asset, records, or other property titled in the name of, held for the benefit of, or otherwise under the control of the Israeli Defendants, or has held, controlled, or maintained custody of any such account, asset, records or other property of the Israeli Defendants at any time since January 2013, except as directed by further order of the

Court, and after the Permanent Receiver provides at least three business days' notice to Valariola and Barak shall not:

a. permit the Israeli Defendants or other persons or entities to withdraw, transfer, remove, dissipate, or otherwise dispose of the Israeli Defendants' assets or records deposited into an account in the name of, or acquired by the Israeli Defendants prior to the entry of this Consent Order;

b. directly or indirectly destroy, alter, or dispose of, in any manner, any records relating to the business activities and business and personal finances of the Israeli Defendants; and

c. deny a request by the Commission or the Permanent Receiver to inspect all records pertaining to every account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of the Israeli Defendants, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, safe deposit box logs, and all communications with the Israeli Defendants. As an alternative to allowing inspection of records, a financial or brokerage institution, business entity or other person may provide copies of records requested by the Commission or the Permanent Receiver.

57. Furthermore, during the Receivership, any such financial or brokerage institution, business entity, or person that receives actual notice of this Order, within ten business days of a request by the Permanent Receiver, or such longer period specified by the Permanent Receiver,

and after the Permanent Receiver has provided at least three business days' notice to Valariola and Barak, shall:

a. turn over to the Permanent Receiver possession and custody of all funds, assets, and other property owned, controlled, managed, or held by, on behalf of, or for the benefit of the Israeli Defendants, either individually or jointly that were deposited into an account in the name of, or acquired between October 1, 2013 and August 31, 2018 (the "Relevant Time Period") and prior to the date of this Consent Order;

b. provide the Permanent Receiver with copies of all records pertaining to any account or asset owned, controlled, managed, or held by, on behalf of, or for the benefit of the Israeli Defendants, either individually or jointly, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, safe deposit box logs, and all communications with the Israeli Defendants;

c. provide the Permanent Receiver with all usernames and passwords to all accounts, to gain or secure access to any of the assets or records, created, acquired, used and/or maintained by any of the Israeli Defendants prior to the entry of this Consent Order, and provide the Permanent Receiver with view-only access to all accounts created, acquired, used and/or maintained by the Israeli Defendants on or after the date this Consent Order is entered, and report to the Permanent Receiver by e-mail on a monthly basis until the

disgorgement obligation is fulfilled setting forth income received or assets acquired; and

d. cooperate with all reasonable requests of the Permanent Receiver relating to implementation of this Order.

VI. MISCELLANEOUS PROVISIONS

58. The Court lifts and extinguishes any Orders freezing or restraining assets that Israeli Defendants acquire and/or earn after the date of the entry of this Order; this includes the asset freeze provisions in paragraphs III.D.2 and IV.6 of the Order Granting Motion for Preliminary Injunction, entered January 7, 2021, ECF No. 199. Except as otherwise provided in this Consent Order, Israeli Defendants' assets acquired and/or earned prior to the date of the entry of this Consent Order and during the Relevant Time Period shall remain frozen pending further order of the Court.

59. The Permanent Receiver shall continue to file periodic reports with the Court summarizing efforts to marshal and collect assets and administer the Receivership Estate.

Notice:

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

Notice to Commission:

Deputy Director, Division of Enforcement
Commodity Futures Trading Commission
525 West Monroe Street, Suite 1100
Chicago, IL 60661
rhowell@cftc.gov

Notice to Valariola:

Seth Taube
Baker Botts LLP
30 Rockefeller Plaza

New York, NY 10112
seth.taube@bakerbotts.com

Notice to Barak:

Seth Taube
Baker Botts LLP
30 Rockefeller Plaza
New York, NY 10112
seth.taube@bakerbotts.com

Notice to DPL:

Melanie Damian, Permanent Receiver
Damian & Valori LLP
1000 Brickell Avenue, Suite 1020
Miami, FL 33131

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

61. Compensation for the Permanent Receiver: The Permanent Receiver and all personnel she hired as previously authorized by the Court, including counsel to the Receiver, remain entitled to reasonable compensation for the performance of duties pursuant to this Consent Order and for the cost of actual out-of-pocket expenses incurred by them for those services authorized by this Consent Order. However, the Permanent Receiver and any personnel she hired shall not be compensated or reimbursed by, or otherwise be entitled to, any funds from the Court or the CFTC. The Permanent Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation on at least a quarterly basis.

62. Change of Address/Phone: Until such time as the Israeli Defendants satisfy in full their Disgorgement Obligation and CMP Obligation as set forth in this Consent Order, the Israeli Defendants shall provide written notice to the Commission and the Permanent Receiver by certified mail of any change to their telephone number and mailing address within ten calendar days of the change.

63. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

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

65. Waiver: The failure of any party to this Consent Order or of any participant at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or participant at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

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

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

68. Counterparts and Facsimile Execution: This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

69. Contempt: the Israeli Defendants understand that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings they may not challenge the validity of this Consent Order**.**

70. Agreements and Undertakings: the Israeli Defendants shall comply with all of the undertakings and agreements set forth in this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this Consent Order for Permanent Injunction and other Ancillary Relief Against Digital Platinum Ltd, Tal Valariola and Itay Barak forthwith and without further notice.

IT IS SO ORDERED on this_____day of_____, 2021.

_____

UNITED STATES DISTRICT JUDGE

CONSENTED AND APPROVED BY:

Digital Platinum, Ltd.

Date: 15.7.2021

Itay Barak

Date: _____

Tal Valariola

Date: 15.7.2021

APPROVED AS TO FORM:

Seth Taube
Attorney for Defendants Itay Barak and Tal Valariola

Date: _____

Jason Pickholz
Attorney for Defendant Digital Platinum, Ltd.

Date: July 21, 2021

Allison Passman
Chief Trial Attorney
Commodity Futures Trading Commission
525 West Monroe Street
Chicago, IL 60661
312-596-0704
apassman@cftc.gov

Dated _____

CONSENTED AND APPROVED BY:

Digital Platinum, Ltd.

Date: _____

Itay Barak

Date: 17.7.21

Tal Valariola

Date: _____

Allison Passman
Chief Trial Attorney
Commodity Futures Trading Commission
525 West Monroe Street
Chicago, IL 60661
312-596-0704
apassman@cftc.gov

Dated _____

APPROVED AS TO FORM:

Seth Taube
Attorney for Defendants Itay Barak and Tal Valariola

Date: _____

Jason Pickholz
Attorney for Defendant Digital Platinum, Ltd.

Date: _____

CONSENTED AND APPROVED BY:

_____
Digital Platinum, Ltd.

Date: _____

_____
Itay Barak

Date: _____

_____
Tal Valariola

Date: _____

APPROVED AS TO FORM:

_____
Seth Taube
Attorney for Defendants Itay Barak and Tal Valariola

Date: 7/19/21

_____
Jason Pickholz
Attorney for Defendant Digital Platinum, Ltd.

Date: _____

_____
Allison Passman
Chief Trial Attorney
Commodity Futures Trading Commission
525 West Monroe Street
Chicago, IL 60661
312-596-0704
apassman@cftc.gov

Dated _____

CONSENTED AND APPROVED BY:

_____
Digital Platinum, Ltd.

Date: _____

_____
Itay Barak

Date: _____

_____
Tal Valariola

Date: _____

APPROVED AS TO FORM:

_____
Seth Taube
Attorney for Defendants Itay Barak and Tal Valariola

Date: _____

_____
Jason Pickholz
Attorney for Defendant Digital Platinum, Ltd.

Date: _____

/s/ Allison V. Passman
Allison Passman
Chief Trial Attorney
Commodity Futures Trading Commission
525 West Monroe Street
Chicago, IL 60661
312-596-0704
apassman@cftc.gov

Dated 10/6/2021