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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
)
vs.)
)
BANC DE BINARY LTD.,)
)
Defendant.)
_____)

2:13-cv-00993-RCJ-VCF

ORDER

This case arises out of the alleged trading of unregistered securities. The Court has granted a Motion for Preliminary Injunction (ECF No. 6). For the reasons given herein, the Court vacates the previous order, replaces it with the present Order, and denies Defendant’s Motion to Reconsider (ECF No. 29).

I. FACTS AND PROCEDURAL HISTORY

Defendant Banc de Binary, Ltd. is a Cypriot company with a license to operate in Cyprus under supervision of the Cyprus Securities and Exchange Commission, as well as licenses to operate in Germany, Spain, and the United Kingdom, but it has no license from Plaintiff Securities and Exchange Commission (“SEC”) to operate in the United States. (*See* Compl. ¶¶ 7–8, June 5, 2013, ECF No. 1). Defendant operates an “online trading platform,” selling “binary options.” (*Id.* 9). A customer can go to Defendant’s website and purchase a binary option, for example in stock of XYZ, Inc. (*Id.*). The customer selects the amount of the binary option (between \$1 and \$3000) and bets whether the stock of XYZ, Inc. will rise or fall from the

1 current price as of a given time and date in the future. (*Id.* ¶ 14). Defendant’s website then
2 determines the percentage payout the customer will receive if correct. (*Id.* ¶ 15). If the customer
3 is correct, he receives back the initial amount he paid for the binary option plus his winnings (the
4 initial bet multiplied by the percentage payout); if the customer is incorrect, he loses much or all
5 of the price he paid for the binary option. (*Id.* ¶¶ 9, 16). The wagers are called “binary” options
6 because there are only two possible outcomes.

7 Defendant has never registered with the SEC. (*Id.* ¶ 8). Defendant solicits customers
8 within the United States. (*See id.* ¶¶ 19–23). Although Defendant claims to have stopped
9 soliciting U.S. customers, existing U.S. customers can still use their accounts to purchase binary
10 options. (*Id.* ¶ 24). The SEC has sued Defendant in this Court for violations of § 5 of the
11 Securities Act of 1933 and § 15(a) of the Securities Exchange Act of 1934 and has asked the
12 Court to issue a preliminary injunction.

13 **II. LEGAL STANDARDS**

14 The Court of Appeals has used two separate sets of criteria for determining whether to
15 grant preliminary injunctive relief:

16 Under the traditional test, a plaintiff must show: (1) a strong likelihood of success
17 on the merits, (2) the possibility of irreparable injury to plaintiff if preliminary
18 relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4)
19 advancement of the public interest (in certain cases). The alternative test requires
that a plaintiff demonstrate either a combination of probable success on the merits
and the possibility of irreparable injury or that serious questions are raised and the
balance of hardships tips sharply in his favor.

20 *Taylor v. Westly*, 488 F.3d 1197, 1200 (9th Cir. 2007). “These two formulations represent two
21 points on a sliding scale in which the required degree of irreparable harm increases as the
22 probability of success decreases.” *Id.*

23 The Supreme Court has ruled, however, that a plaintiff seeking an injunction must
24 demonstrate that irreparable harm is “likely,” not just possible. *Winter v. NRDC*, 555 U.S. 7,
25 19–23 (2008) (rejecting the Ninth Circuit’s alternative “sliding scale” test, at least as to the

1 irreparable harm element). The Court of Appeals has explicitly recognized that its “possibility”
2 test was “definitively refuted” in *Winter*, and that “[t]he proper legal standard for preliminary
3 injunctive relief requires a party to demonstrate ‘that he is likely to succeed on the merits, that he
4 is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of
5 equities tips in his favor, and that an injunction is in the public interest.’” *Stormans, Inc. v.*
6 *Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting *Winter*, 129 S. Ct. at 374) (reversing a
7 district court’s use of the Ninth Circuit’s pre-*Winter* “sliding-scale” standard and remanding for
8 application of the proper standard).

9 A later panel ruled that the sliding scale test remains viable when there is a lesser
10 showing of likelihood of success on the merits amounting to “serious questions,” just not when
11 there is a lesser showing of likelihood of irreparable harm. *See Alliance for the Wild Rockies v.*
12 *Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011). *Cottrell* presents some difficulty in light of *Winter*
13 and *Selecky*. As an initial matter, to the extent *Cottrell*’s interpretation of *Winter* is inconsistent
14 with *Selecky*’s interpretation of the same case, *Selecky* controls. *See Miller v. Gammie*, 335 F.3d
15 889, 899 (9th Cir. 2003) (en banc) (holding that, in the absence of an intervening Supreme Court
16 decision, only the en banc court may overrule a decision by a three-judge panel). In any case, the
17 Supreme Court stated in *Winter* that “[a] plaintiff seeking a preliminary injunction must establish
18 that he is *likely* to succeed on the merits, that he is *likely* to suffer irreparable harm in the absence
19 of preliminary relief, that the balance of equities tips in his favor, *and* that an injunction is in the
20 public interest.” *Winter*, 555 U.S. at 20 (citing *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008);
21 *Amoco Prod. Co. v. Gambell*, 480 U.S. 531, 542 (1987); *Weinberger v. Romero-Barcelo*, 456
22 U.S. 305, 311–12 (1982)) (emphases added). The test is presented as a four-part conjunctive test,
23 not as a four-factor balancing test, and the word “likely” modifies the success-on-the-merits
24 prong in exactly the same way it separately modifies the irreparable-harm prong, indicating that
25 in an appropriate case, the Court would require a movant to show that he is more likely than not

1 to succeed on the merits. In rejecting the sliding-scale test, the *Winter* Court emphasized the fact
2 that the word “*likely*” modifies the irreparable-injury prong. *See id.* at 22 (emphasis in original).
3 The word “*likely*” also modifies the success-on-the-merits prong. *See id.* at 20.

4 In summary, to satisfy *Winter*, a movant must show that he is “*likely*” to succeed on the
5 merits. “*Likely*” means “having a high probability of occurring or being true.” Merriam–Webster
6 Dictionary, <http://www.merriam-webster.com/dictionary/likely>. This colloquial, lay definition of
7 “*likely*” may be too stringent. Though it could be read consistently with *Winter*,
8 Merriam–Webster’s definition of “*likely*” would appear to require a showing corresponding to
9 the clear-and-convincing-evidence standard, because something with a “high probability” of
10 being true has more than a mere greater-than-not chance of being true. Black’s Law Dictionary,
11 a more contextual reference work, defines the “likelihood-of-success-on-the-merits test” more
12 leniently as “[t]he rule that a litigant who seeks [preliminary relief] must show a reasonable
13 probability of success” *Black’s Law Dictionary* 1012 (9th ed. 2009). The Court must
14 reconcile the cases by interpreting the *Cottrell* “serious questions” requirement to be in harmony
15 with the *Winter/Selecky* “likelihood” standard, not as being in competition with it. “Serious
16 questions going to the merits” must mean that there is at least a reasonable probability of success
17 on the merits. On its face, the phrase “serious questions” appears to focus on the gravity of the
18 issues, but appears silent on the probability of the truth of the proffered proposition, which is the
19 focus of the success-on-the-merits prong. The gravity of the issues is separately considered
20 under the balance-of-hardships prong. The *Cottrell* court must have meant something like
21 “reasonable probability,” which appears to be the most lenient position on the sliding scale that
22 can satisfy the requirement that success on the merits be “*likely*.” If success on the merits is
23 merely possible, but not at least reasonably probable, no set of circumstances with respect to the
24 other prongs will justify preliminary relief.

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2 **III. ANALYSIS**

3 The Court grants the Motion for Preliminary Injunction. The Court will, however,
4 discuss whether and why binary options, as described in the Complaint, are “securities” the SEC
5 may regulate, because they are not the kind of transaction that one typically thinks of when one
6 thinks of securities.¹ “Security” is defined under the Securities Exchange Act of 1934 (the
7 “Act”), as amended, as:

8 any note, stock, treasury stock, security future, security-based swap, bond, debenture,
9 certificate of interest or participation in any profit-sharing agreement or in any oil,
10 gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization
11 certificate or subscription, transferable share, investment contract, voting-trust
12 certificate, certificate of deposit for a security, any put, call, straddle, option, or
13 privilege on any security, certificate of deposit, or group or index of securities
14 (including any interest therein or based on the value thereof), or any put, call,
15 straddle, option, or privilege entered into on a national securities exchange relating
16 to foreign currency, or in general, any instrument commonly known as a “security”;
17 or any certificate of interest or participation in, temporary or interim certificate for,
18 receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but
19 shall not include currency or any note, draft, bill of exchange, or banker's acceptance
20 which has a maturity at the time of issuance of not exceeding nine months, exclusive
21 of days of grace, or any renewal thereof the maturity of which is likewise limited.

22 15 U.S.C. § 78c(a)(10).

23 Traditional stock options are securities because they are in fact “option[s] . . . on [a]
24 security,” i.e., they are option contracts to purchase or sell stock itself at a predetermined value.

25 *See Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 750–51 (1975).² With a binary

26 ¹It may be the case that binary options are in fact simply gambling bets. *See generally*
27 Gordon Pape, *Don't Gamble on Binary Options*, Forbes (July 27, 2010),
28 <http://www.forbes.com/sites/investor/2010/07/27/dont-gamble-on-binary-options>. The Court
29 finds that they are in fact almost certainly gambling bets, but also that the SEC may regulate
30 them.

31 ²For the reader unfamiliar with the operation of stock options, the Court will briefly
32 explain. Assume XYZ stock currently sells at \$5 per share, and that an option to buy one share
33 of XYZ stock for \$6 on or before January 1, 2014 currently sells at \$0.10 (a typical price). An
34 investor might buy the stock directly and hope the price rises or that it pays dividends.

1 option, however, the purchaser receives neither the stock itself nor the right to purchase the stock
2 in the future. Binary options are in substance pure gambling bets. They are also unlike options
3 in that they do not require exercise by the owner. They are simply wagers that will pay (or not)
4 automatically upon a certain date. The condition upon which the bets turn are the price of
5 stock—more accurately, whether a stock has increased or decreased in value as of the time and
6 date of the wager, not by what amount it has increased or decreased in value—and the binary
7 option purchaser receives no putative interest in the stock whatsoever, i.e., no option to purchase
8 or sell it at a given price. Regardless of their name, then, binary options are in substance not
9 option contracts at all, but wagering contracts. *Compare Black’s Law Dictionary* 375 (9th ed.
10 2009) (“*wagering contract*. 1. A contract the performance of which depends on the happening of
11 an uncertain event, made entirely for sport.”); *with id.* 1203 (“*option* . . . 4. The right (but not the
12 obligation) to buy or sell a given quantity of securities, commodities, or other assets at a fixed
13 price within a specified time . . .”). The concept of binary options is relatively new—Black’s
14 Law Dictionary has no entry for them. Black’s does, however, have an entry for the closest thing
15 to binary options heretofore encountered apart from the entry for “wagering contract.” *See id.*

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17 Alternatively, an investor could buy options to buy the stock. An investor in this situation with
18 \$1000 to spend could purchase: (1) 200 shares of XYZ stock at \$5 per share; or (2) options to
19 buy 10000 shares of XYZ stock at \$6 per share on or before January 1, 2014. If XYZ stock does
20 not reach \$6 per share by January 1, 2014, the investor’s options will be worthless, because it
21 makes no sense to purchase stock at above market price. But if the stock has become worth more
22 than \$6 before the options expire, the options could be very profitable, because the investor has
23 the right to purchase 10000 shares of XYZ stock at below market price, guaranteeing an instant
24 profit. Assume that in our example XYZ stock has risen to \$10 per share before the options have
25 expired. If the investor bought 200 shares of XYZ stock directly, he could sell it for a profit of
\$1000 (200 shares bought at \$5 and sold at \$10), but if the investor bought options to buy 10000
shares of XYZ stock at \$6 per share, his profit will be \$39,000 (10000 shares bought at \$6 and
sold at \$10, minus the \$1000 price of the options). In summary, stock options are a way to
multiply the power of investment funds, but they are risky because they are not sales of stock but
sales of options to purchase stock; they expire and are worth nothing if the price of the
underlying stock doesn’t increase (or decrease) to the extent the investor has anticipated. It is
very similar to gambling, but because stock options are in fact option contracts to trade securities,
they are clearly “securities” under the Act.

1 1204 (*naked option*. A call option that grants another the right to buy stock even though the
2 option-giver does not own the stock to back up that commitment.”). A naked option is different
3 from a binary option in a critical regard, however, because a naked option is still an option to
4 purchase stock. The fact that the naked option giver does not in fact own the stock to back up the
5 option if exercised is relevant to breach of the option contract and perhaps even fraud, but the
6 transaction is still a transaction of securities, because the naked option giver has in fact promised
7 to deliver the securities if the option is executed. The naked option purchaser may have no
8 practical ability to obtain stock through the exercise of the option because the option giver has
9 defrauded him (or at least seriously risked an inability to perform under the option contract), but
10 the binary option giver has made no promise of the binary option purchaser’s ability to obtain the
11 stock. He has made no pretense of being anything other than a bookmaker. Both parties to a
12 binary option are well aware that the transaction includes no present, future, vested, or contingent
13 interest in the stock itself. Binary option givers and buyers do not purport to trade interests in
14 securities any more than tellers and gamblers at a racetrack purport to trade interests in horses. In
15 these transactions, the securities and the horses, respectively, are neither part of the consideration
16 for nor the subject matter of the contract, but rather the securities’ and horses’ respective
17 performance is simply a remote condition precedent triggering the obligations of the parties.
18 Although stock investments, and particularly stock options, may also be fairly described as
19 “gambling” in a colloquial sense, binary options constitute gambling in a more profound and
20 essential way, because the purchaser of a binary option receives no present or future interest
21 whatsoever in any security.

22 Next, binary options resemble European-style options in one way. That is, European-
23 style options, unlike American-style options, may only be executed at the time of expiration. But
24 unlike binary options, European-style options still include the right to obtain the security via
25 execution at that time.

1 Finally, the binary options at issue here may be “cash-settled options” that the SEC may
2 regulate. *See Caiola v. Citibank, N.A., N.Y.*, 295 F.3d 312, 326–27 (2d Cir. 2002). The
3 *Caiola* court ruled that the fact that options are cash-settled rather than settled by delivery is not
4 important to whether they qualify as “securities” under the statute. *See id.*³ The Court agrees in
5 part but respectfully disagrees that cash-settled options are “options” under the meaning of
6 § 78c(a)(10) even in cases where the “option” gives the purchaser no pretense whatsoever to the
7 right to obtain the underlying security. The Court agrees that the Act does not distinguish
8 between regulated and “over-the-counter” (private, unregulated) options. *See id.* at 325. There is,
9 as the Second Circuit noted, no language expressing or implying such a distinction in the statute.
10 The Court also agrees that the Act does not distinguish between physically-settled and
11 cash-settled options *per se*. *See id.* The Act does not speak in terms of how the parties settle their
12 options contracts. But the statute, as broad as it is, only lists certain items, and the Court believes
13 there is a critical distinction between: (1) cash-settled options under which the purchaser has a
14 legal right to obtain the security but where the parties in practice agree to settle the option with
15 cash, whether or not that intention or expectation existed when the option was given (“potentially
16 cash-settled options”); and (2) cash-settled options under which there is no putative right to
17 obtain the security (“necessarily cash-settled options”). The Court simply cannot agree that a
18 contract under which the purchaser has no putative right to obtain the security is an “option.”

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21 ³Cash-settled options are those settled with cash, rather than by delivery, either because
22 the option buyer does not care to keep the security, does indeed wish to exercise the right to
23 purchase the security but does not wish to experience the hassle of obtaining physical possession
24 of it due to transport costs or other considerations, or because the security cannot be physically
25 delivered because it involves an interest in something that cannot be delivered in physical form.
Rather, the investor “settles” the option by having the option giver transfer cash to him in an
amount equal to the market value of the securities at the time of settlement minus the price at
which he has the right to purchase the securities under the option contract. The investor simply
takes his expected profit in cash. In some cases, it is known ahead of time that cash settlement
will be used, and not physical delivery.

1 There is no good reason to read more than the common definition of “option” into the statute.
2 An “option” is the right, but not the duty, to do something, i.e., the possibility of exercising the
3 right to a particular course of action. Binary options simply do not contain this characteristic.
4 They do not even give the purchaser the right to determine whether or when to execute the
5 supposed “option.” They give the purchaser no putative right to choose any future course of
6 action whatsoever. Binary options, like necessarily cash-settled options, are wagering contracts
7 regardless of their title.

8 The Court also respectfully disagrees with the Second Circuit’s reasoning that the statute
9 would not include in the definition of “security” options on groups and indexes of securities if
10 the intent were not to regulate transactions under which it is known no physical representation of
11 the right to the security will be delivered, because one cannot deliver a share of an index or group
12 of securities. *See id.* at 325–26. The *Caiola* court’s reasoning here is persuasive until one closely
13 examines a critical premise upon which it is based. There have been such things as mutual funds
14 and index funds for quite some time, for at least as long as more exotic types of investments like
15 necessarily cash-settled options. Mutual funds are securities consisting of bundles of stocks
16 and/or other securities, and index funds are a subclass of mutual funds consisting of bundles of
17 stocks representing an entire stock index such that the value of shares of the index fund are
18 inherently tied to the value of the index itself. The Court is aware of no reason why instruments
19 representing shares of ownership in such funds cannot be physically delivered, whether regulated
20 or not. The Court agrees that in cases where the option agreement includes the right to obtain an
21 interest in a mutual fund or index fund, i.e., potentially cash-settled options, the option is in fact
22 an “option,” and therefore a “security” under the statute. But if the agreement is a pure wager,
23 with no putative right to obtain the security thereunder, as with necessarily cash-settled options
24 and binary options, the agreement simply does not fall under the commonly understood definition
25 of an “option,” which, critically, the Act does not separately define, and the transaction is simply

1 a wagering contract.

2 The Complaint itself indicates that Defendant’s website contains classic indicia of a
3 gambling operation. For example, Defendant’s website determines the amount of the payout
4 based not upon the actual increase or decrease in the value of the underlying security but rather
5 upon a predetermined payout percentage depending only upon whether the price has gone up or
6 down as of a future date and time with respect to the date and time of purchase. (*See* Compl.
7 ¶ 16). That is, like at a racetrack or sports book, the house determines how much the wagerer
8 wins or loses by adjusting the odds based upon the house’s estimation of the outcome of the bet
9 and/or the sums of other customers’ pending bets, so as to ensure a profit for the house. In this
10 case it is probably a computer algorithm, as opposed to a human odds maker, that makes the
11 calculations, but the principle is the same. Also, Defendant offers “trading bonuses” to
12 customers depositing money with Defendant in the same way that casinos entice customers to
13 gamble by offering gambling credits, knowing that the customer will spend the free credits and
14 then his own funds, as well. (*See id.* ¶ 22). That is the “economic reality” of these transactions.
15 *See SEC v. W.J. Howey Co.*, 328 U.S. 293, 298 (1946).

16 Defendants are not off the hook, however. Although they are not “options,” binary
17 options are “securities” under the statute. The Act includes in the definition of “security” “any
18 put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of
19 securities (including any interest therein *or based on the value thereof*)” 15 U.S.C.
20 § 78c(a)(10) (emphasis added). It is this parenthetical text that makes clear Congress’ intent to
21 give the SEC the power to regulate both the trading of interests in securities directly and
22 wagering contracts turning on the value of securities, regardless of whether the latter are dressed
23 up as options contracts or given dissembling titles such as “cash-settled options.” Although
24 binary options are not “options” under the Act, they are “privileges . . . based on the value [of
25 securities]” because they give the purchaser a contractual right to the payment of money based

1 upon the value of securities. They are probably also “puts” or “calls” because they are bets that
2 the price of the security will rise or fall. The Court agrees with the *Caiola* court that the
3 parenthetical phrase “including any interest therein or based on the value thereof” modifies the
4 entire preceding phrase “any security, certificate of deposit, or group or index of securities,” not
5 only the final member of that list. *See Caiola*, 295 F.3d at 326. In summary, Congress has
6 empowered the SEC under the Act to regulate wagering contracts turning upon the value of
7 securities. That is what binary options are, and the SEC may therefore regulate them. The
8 standards for a preliminary injunction being satisfied, the Court grants the Motion for
9 Preliminary Injunction.⁴

10 The Court rejects Defendant’s argument that the present Motion is moot because
11 Defendant has both ceased soliciting and accepting new American customers and has, contrary to
12 Plaintiff’s allegations, frozen the accounts of existing American customers. Defendant’s
13 voluntary cessation of the alleged unlawful activity does not negate a justiciable controversy
14 under the mootness doctrine, because Defendant could begin soliciting and accepting new
15 American customers or permitting existing American customers to use their accounts again at
16 any time. *See Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 189
17 (2000). And Defendant is wrong that Plaintiff bears the burden of proving this exception under
18 the likelihood-of-success-on-the-merits prong of the preliminary injunction standard. The
19 mootness issue is a prudential jurisdictional question antecedent to the merits of the preliminary
20 injunction motion, not a merits question incorporated therein, and “[t]he heavy burden of

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22 ⁴The Court also notes that Defendant’s operation may constitute an illegal gambling
23 enterprise under 18 U.S.C. § 1955 *et seq.* Binary options likely qualify as gambling wagers
24 under the law of this state or any other. Binary options, because they are “securities” under the
25 Act, do not constitute “wagers” for the purposes of the Unlawful Internet Gambling Enforcement
Act of 2006 (“UIGEA”). *See* 31 U.S.C. § 5362(1)(E)(i). But the exclusion of binary options
from UIGEA’s definition of “wager” presumably has no effect upon whether such transactions
constitute gambling under state law, and the latter analysis is the basis for a RICO action if there
is a sufficient interstate nexus, which seems indisputable here.

1 persuading the court that the challenged conduct cannot reasonably be expected to start up again
2 lies with the party asserting mootness.” *Id.* (internal quotation marks and alteration omitted).
3 Defendant has not satisfied that burden.

4 **CONCLUSION**

5 IT IS HEREBY ORDERED that the Motion for Preliminary Injunction (ECF No. 6) is
6 GRANTED.

7 IT IS FURTHER ORDERED that the Order (ECF No. 28) is VACATED.

8 IT IS FURTHER ORDERED that the Motion to Reconsider (ECF No. 29) is DENIED.

9 IT IS FURTHER ORDERED that Banc de Binary, and its officers, agents, servants,
10 employees, attorneys, subsidiaries and affiliates, and those persons in active concert or
11 participation with any of them who receive actual notice of this Order, by personal service or
12 otherwise, and each of them, be and hereby are temporarily restrained and enjoined from, directly
13 or indirectly, in the absence of any applicable exemption, (a) offering and selling in the United
14 States binary options that are based on stock or stock indices and that are offered on Banc de
15 Binary’s website (www.bbinary.com), unless a registration statement is in effect as to such binary
16 options, or (b) otherwise:

17 (i) making use of any means or instruments of transportation or communication in
18 interstate commerce or of the mails in the United States to sell a security through the use or
19 medium of any prospectus or otherwise, unless a registration statement is in effect as to such
20 security;

21 (ii) carrying or causing to be carried through the mails or in interstate commerce in the
22 United States, by any means or instruments of transportation, any security for the purpose of sale
23 or for delivery after sale, unless a registration statement is in effect as to such security; or

24 (iii) making use of any means or instruments of transportation or communication in
25 interstate commerce or of the mails to offer to sell or offer to buy in the United States through the

1 use or medium of any prospectus or otherwise any security, unless a registration statement has
2 been filed with the SEC as to such security, or while the registration statement is the subject of a
3 refusal order or stop order or (prior to the effective date of the registration statement) any public
4 proceeding or examination under Section 8 of the Securities Act, 15 U.S.C. § 77h; in violation of
5 Section 5 of the Securities Act, 15 U.S.C. § 77e.

6 IT IS FURTHER ORDERED that Banc de Binary, and its officers, agents, servants,
7 employees, attorneys, subsidiaries and affiliates, and those persons in active concert or
8 participation with any of them who receive actual notice of this Order, by personal service or
9 otherwise, and each of them, be and hereby are temporarily restrained and enjoined from, directly
10 or indirectly, unless Banc de Binary is registered with the SEC in accordance with Section 15(b)
11 of Exchange Act, 15 U.S.C. § 78o(b), and in the absence of any applicable exemption, acting as a
12 broker-dealer in the United States or otherwise making use of the mails or any means or
13 instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to
14 induce the purchase or sale of, any security (other than an exempted security or commercial
15 paper, bankers' acceptances, or commercial bills) in the United States, in violation of Section
16 15(a) of the Exchange Act, 15 U.S.C. § 78o(a).

17 IT IS FURTHER ORDERED that, except as otherwise ordered by this Court, Banc de
18 Binary, and its officers, agents, servants, employees, attorneys, subsidiaries and affiliates, and
19 those persons in active concert or participation with any of them, who receive actual notice of
20 this Order, by personal service or otherwise, and each of them, be and hereby are temporarily
21 restrained and enjoined from, directly or indirectly destroying, mutilating, concealing,
22 transferring, altering, or otherwise disposing of, in any manner, any documents, which includes
23 all books, records, computer programs, computer files, computer printouts, contracts, emails,
24 correspondence, memoranda, brochures, or any other documents of any kind in their possession,
25 custody or control, however created, produced, or stored (manually, mechanically, electronically,

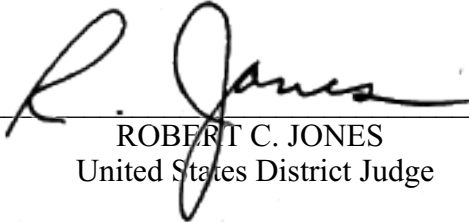
1 or otherwise), pertaining in any manner to Banc de Binary or its activities.

2 IT IS FURTHER ORDERED that this Preliminary Injunction shall remain in effect until
3 entry of a Final Judgment in, or other final disposition of, this action.

4 IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this action for
5 the purpose of implementing and carrying out the terms of all orders and decrees which may be
6 entered herein and to entertain any suitable application or motion for additional relief within the
7 jurisdiction of this Court.

8 IT IS SO ORDERED.

9 Dated this 5th day of August, 2013.

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11 ROBERT C. JONES
12 United States District Judge
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