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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13
14 **SECURITIES AND EXCHANGE**
COMMISSION,

15
16 Plaintiff,

17 vs.

18 **BANC DE BINARY LTD,**

19 Defendant.
20

Case No.:
COMPLAINT

21
22
23 Plaintiff Securities and Exchange Commission (“SEC”) alleges as follows:

24 **JURISDICTION AND VENUE**

25 1. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1),
26 and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77t(d)(1), & 77v(a), and Sections 21(d)(1),
27 21(d)(3)(A), 21(e), and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e), &
28 78aa. Defendant has, directly or indirectly, made use of the means or instrumentalities of

1 interstate commerce, of the mails, or of the facilities of a national securities exchange, in
2 connection with the transactions, acts, practices, and courses of business alleged in this
3 complaint.

4 2. Venue is proper in this district pursuant to Section 22(a) of the Securities Act, 15
5 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because certain of the
6 transactions, acts, practices, and courses of conduct constituting violations of the federal
7 securities laws occurred within this district.

8 **SUMMARY**

9 3. This matter involves an unregistered offering of securities by Banc de Binary Ltd.
10 (“Banc de Binary”), a Cypriot and Israeli company which operates an online binary options
11 trading platform. On Banc de Binary’s website, www.bbinary.com, Banc de Binary offers and
12 sells “binary options”— securities that provide a payout contingent upon the price movement of
13 an underlying asset, including stock and stock indices.

14 4. The binary options offered by Banc de Binary are securities under the federal
15 securities laws. Banc de Binary offered and sold, and continues to offer and sell, these securities
16 to U.S. investors in unregistered transactions through general solicitations by its representatives
17 over the internet and through phone calls and spam emails. In doing so, Banc de Binary has
18 violated, and continues to violate, Sections 5(a) and 5(c) of the Securities Act of 1933 (the
19 “Securities Act”).

20 5. Moreover, by trading these binary options on account of U.S. investors, Banc de
21 Binary acted, and continues to act, as a broker-dealer. However, Banc de Binary is not registered
22 with the SEC as a broker-dealer, and thus has violated, and continues to violate, Section 15(a)(1)
23 of the Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78o(a)(1).

24 6. The SEC seeks preliminary and permanent injunctions against Banc de Binary, as
25 well as an accounting, disgorgement with prejudgment interest and civil penalties.

26 **THE DEFENDANT**

27 7. Banc de Binary is based in the Republic of Cyprus and regulated by the Cyprus
28 Securities and Exchange Commission (“CySEC”). Based on its registration with CySEC, Banc

1 de Binary has obtained reciprocal licenses in several other countries in the European Union,
2 including Germany, Spain and the United Kingdom, but not in the United States. From 2010
3 until at least January 2013, Banc de Binary maintained a virtual office on Wall Street in New
4 York City, and listed that address on its website and in emails from purported Banc de Binary
5 representatives to Banc de Binary customers.

6 8. Banc de Binary has never registered with the SEC in any capacity. It also never
7 registered any offering of securities that it has offered or sold.

8 **THE ALLEGATIONS**

9 **A. Banc de Binary’s “Binary Options”**

10 9. Since 2010, Banc de Binary has operated an online trading platform that allows
11 investors to buy what Banc de Binary calls “binary options.” In general, a “binary option” is a
12 security whose payout is contingent on the future value of an underlying asset. Banc de Binary’s
13 binary options are over-the-counter, cash-settled option contracts. A binary option is “binary”
14 because there are only two possible outcomes—upon expiration, its holder will receive either a
15 pre-determined amount of money or nothing at all, depending on whether the underlying asset
16 increases or decreases in value.

17 10. For example, if the current price of the stock of a hypothetical company “XYZ,
18 Inc.” were \$80 per share, an investor could go to Banc de Binary’s online trading platform and
19 buy a binary option that will pay some amount if XYZ’s stock price goes above \$80 per share at
20 some fixed point in the future. If, at expiration of the option, the stock price of XYZ is greater
21 than \$80 per share, then the binary option holder receives the payout. On the other hand, if
22 XYZ’s stock price is less than \$880, then the holder receives nothing.

23 11. On Banc de Binary’s website, www.bbinary.com, investors can buy binary
24 options whose payouts are contingent on the value of a variety of underlying assets. These
25 underlying assets include stock of companies and broad-based, published stock indices like the
26 S&P 500, as well as commodities and currencies.

27 12. Banc de Binary’s website portrays the binary options as “investments,” and refers
28 to the “trading” of options. It also explains that binary options are regulated by the CySEC.

1 Moreover, on its website, Banc de Binary offers the services of “brokers” who “provide up-to-
2 date trading signals and advice.”

3 **B. Banc de Binary’s Trading Platforms**

4 13. According to its website, Banc de Binary provides five different ways to purchase
5 binary options—or “trading platforms”—each of which offers different features for creating
6 binary options.

7 14. In general, a Banc de Binary customer can purchase a binary option by taking the
8 following steps with these trading platforms. First, the customer selects the underlying asset—
9 for example, a stock or stock index. Second, the customer then chooses whether he or she wants
10 a binary option that pays out if the price of the underlying asset will go up (a “call option”) or
11 down (a “put option”). Third, the customer inputs his or her investment amount (generally
12 between \$1 and \$3,000). Finally, the customer selects an expiration period, which could be as
13 little as 60 seconds. Banc de Binary then states the payout amount (*e.g.*, 72%) for the binary
14 option created by the customer. At that point, the Banc de Binary customer can click a button on
15 the website in order to purchase the binary option. A Banc de Binary customer generally cannot
16 cancel an order once he or she has purchased the option.

17 15. The payout is determined at the end of the expiration period of the Banc de
18 Binary option purchased by the investor. If the price of the underlying asset moved in the
19 direction selected by the investor, then the investor receives the pre-determined payout amount
20 set when he or she purchased the binary option; if the price moved in the other direction, then the
21 investor forfeits the purchase price of the binary option.

22 16. As an example, an investor could use a Banc de Binary trading platform to buy a
23 binary option that is based on the price of stock of the company, “XYZ, Inc.” The investor, for
24 instance, could use one of the Banc de Binary trading platforms to invest \$1,000 to buy a binary
25 option with a 72% payout if the price of XYZ stock increases within the next five minutes. Five
26 minutes later, if the price of XYZ stock is higher than it was when the binary option was
27 purchased, then \$1,720—the \$1,000 originally invested plus the \$720 payout—is deposited into
28

1 the investor's Banc de Binary account. On the other hand, if XYZ stock decreases in those five
2 minutes, then the investor receives little or nothing.

3 17. Although not disclosed on its website, Banc de Binary claims it acts as an
4 "introducing broker" for binary option trades that are executed by a market maker licensed with
5 the CySEC. Banc de Binary has allowed investors to open online trading accounts with Banc de
6 Binary with as little as \$250, which can be charged to the investor's credit card. Banc de Binary
7 has also urged its customers to deposit additional money into their accounts to qualify for
8 purportedly profitable trading signals and trading advice.

9 18. To further stimulate deposits and trading activity, Banc de Binary has offered to
10 supplement investor accounts with a "trading bonus." For example, an investor who deposited
11 \$1,000 into his account, might get a 50% trading bonus of \$500, allowing him to purchase up to
12 \$1,500 in binary options at any one time.

13 **C. Banc de Binary's Solicitation of U.S.-Based Investors**

14 19. According to one Banc de Binary representative, Banc de Binary had about
15 250,000 investors in the fall of 2012, and 50% to 60% of those investors were located in the
16 United States. At one point in time, Banc de Binary's website stated the following about an
17 "elite concierge service" it offered its customers: "Our entire staff is located in the United
18 States. We never outsource abroad and your information is secured in our US Based server
19 facilities."

20 20. In emails to customers and on its website, Banc de Binary held itself out as having
21 an office (indeed, at times even a "headquarters") on Wall Street in New York. Banc de
22 Binary's website indicated that it maintained an address on Wall Street and listed a New York-
23 based telephone number. Banc de Binary only recently removed this address (but not the phone
24 number) from its website.

25 21. Banc de Binary solicited customers in the United States. In addition to
26 www.bbinary.com, it also maintained websites www.bancdebinary.com and www.bbinary.net.
27 It broadly advertised its websites to individuals in the United States through YouTube videos,
28 spam emails, and other internet-based advertising. Banc de Binary also solicited potential

1 investors in the United States by sending them emails, calling them on the telephone, and
2 chatting with them via instant messenger over the Internet.

3 22. These solicitation efforts were successful. For example, after reviewing a Banc
4 de Binary YouTube video and Banc de Binary's website, a man residing in Nevada opened a
5 trading account with Banc de Binary in July 2012. He deposited \$500 into his Banc de Binary
6 account, and the next day, Banc de Binary gave him a \$500 trading bonus. In late July and early
7 August 2012, he received a series of emails from a Banc de Binary representative urging him to
8 deposit more money into his account in order to qualify for a "managed account," which
9 provided special trading signals and trading advice. In October 2012, he deposited an additional
10 \$500 into his Banc de Binary trading account, and Banc de Binary again matched his deposit
11 with a \$500 bonus. Between July 2012 and December 2012, he entered into about 880 binary
12 options transactions using several of Banc de Binary's trading platforms. Among other binary
13 options, he purchased binary options based on stock.

14 23. As another example, in late August or early September 2012, a California woman
15 received a spam email advertising Banc de Binary's binary options trading platform. Shortly
16 thereafter, she opened a trading account with Banc de Binary and promptly funded her account
17 with \$1,000 from her bank account. A Banc de Binary representative then contacted her and
18 convinced her to deposit another \$750 into her trading account. Over the next three months, she
19 invested in binary options using several of Banc de Binary's trading platforms. Among other
20 forms of binary options offered by Banc de Binary, she purchased binary options based on stock.

21 24. In mid-January 2013, Banc de Binary claimed to have stopped accepting new
22 investors in the United States. However, preexisting U.S. customers are still able to log on to
23 their Banc de Binary accounts, and current U.S. customers are still allowed to purchase binary
24 options from Banc de Binary. In fact, one U.S. Banc de Binary customer not only was able to
25 log in and purchase binary options as recently as May 29, 2013, a Banc de Binary representative
26 sent her "trading signals" and recommendations that encouraged her to do so.

1 25. Banc de Binary has not attempted to ascertain whether prospective investors in
2 binary options were accredited investors or to limit the sale of binary options to accredited
3 investors.

4 26. For example, one Banc de Binary customer had a monthly income of \$300 and a
5 net worth of less than \$25,000. Neither the Banc de Binary representative that spoke to her, nor
6 anyone else at Banc de Binary, asked her whether she was an accredited investor, what her assets
7 were, or what her income was. Similarly, Banc de Binary actively encouraged another investor
8 in Banc de Binary options to deposit additional funds into his Banc de Binary trading account
9 even after he informed the Banc de Binary representative that he was unemployed and had less
10 than \$1,000 in his checking account.

11 **D. No Registration with the SEC**

12 27. Banc de Binary has offered and sold, and continues to offer and sell, binary
13 options to U.S. customers. However, it has not registered the sale and offer of binary options to
14 U.S. investors with the SEC. No registration statement has ever been filed with the SEC for the
15 offer or sale of any of the binary options sold by Banc de Binary.

16 28. Through its online trading platform of binary options, Banc de Binary is engaged
17 in, and regularly participates in, the business of offering, selling and otherwise effecting
18 transactions in securities for the account of others. Banc de Binary has actively solicited U.S.
19 investors through its website; has executed transactions on behalf of U.S. investors; and held
20 funds on behalf of U.S. investors. It also directly received compensation from binary options
21 trading because each time an investor lost on a binary option trade, Banc de Binary kept the
22 purchase price that the investor paid for the option. Moreover, Banc de Binary induced or
23 attempted to induce its investors to buy more binary options by offering substantial bonus
24 deposits into their accounts in exchange for their agreeing to satisfy certain trading volume
25 requirements. This conduct continues today.

26 29. As such, Banc de Binary is a broker-dealer as that term is defined in the federal
27 securities laws. However, Banc de Binary is not—and has never been—registered with the SEC
28 as a broker-dealer.

FIRST CLAIM FOR RELIEF

Unregistered Offer and Sale of Securities

(Violations of Section 5 of the Securities Act)

30. The SEC realleges and incorporates by reference paragraphs 1 through 29 above.

31. The binary options that Banc de Binary offered and sold to U.S. customers as alleged herein constitute “securities” as defined by the Securities Act and the Exchange Act.

32. Banc de Binary, by engaging in the conduct described above, directly or indirectly, singly and in concert with others, made use of the means or instruments of transportation or communication in interstate commerce, or of the mails, to offer to sell or to sell securities, or carried or caused to be carried through the mails or in interstate commerce, by means or instruments of transportation, securities for the purpose of sale or for delivery after sale, when no registration statement had been filed or was in effect as to such securities, and when no exemption from registration was applicable.

33. By engaging in the conduct described above, Banc de Binary violated, and unless restrained and enjoined, is reasonably likely to continue to violate, Sections 5 of the Securities Act, 15 U.S.C. §§ 77e.

SECOND CLAIM FOR RELIEF

Unregistered Broker-Dealer

(Violation of Section 15(a) of the Exchange Act)

34. The SEC realleges and incorporates by reference paragraphs 1 through 29 above.

35. Banc de Binary has, by engaging in the conduct set forth above, made use of the mails and means or instrumentalities of interstate commerce to effect transactions in, and induced and attempted to induce the purchase or sale of, securities (other than exempted securities or commercial paper, bankers' acceptances, or commercial bills) without being registered with the SEC in accordance with Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b), and without complying with any exemptions promulgated pursuant to Section 15(a)(2), 15 U.S.C. § 78o(a)(2).

1 36. By reason of the foregoing, Banc de Binary, directly and indirectly, violated
2 Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a), and is likely to commit such violations in
3 the future unless enjoined from doing so.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, the SEC respectfully requests that the Court:

6 **I.**

7 Issue findings of fact and conclusions of law that Banc de Binary committed the alleged
8 violations.

9 **II.**

10 Issue a judgment, in a form consistent with Rule 65(d) of the Federal Rules of Civil
11 Procedure, permanently enjoining Banc de Binary, and its officers, agents, servants, employees
12 and attorneys, and those persons in active concert or participation with any of them, who receive
13 actual notice of the order by personal service or otherwise, and each of them, from violating
14 Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a), and Section 5 of the Securities Act, 15
15 U.S.C. §§ 77e.

16 **III.**

17 Order Banc de Binary to account for and disgorge all ill-gotten gains from its illegal
18 conduct, together with prejudgment interest thereon.

19 **IV.**

20 Order Banc de Binary to pay civil penalties under Section 20(d) of the Securities Act, 15
21 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

22 **VI.**

23 Retain jurisdiction of this action in accordance with the principles of equity and the
24 Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and
25 decrees that may be entered, or to entertain any suitable application or motion for additional
26 relief within the jurisdiction of this Court.
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