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U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	18 Civ. ()
	:	
- against -	:	ECF Case
	:	
SPARK TRADING GROUP, LLC and	:	COMPLAINT
NIKET SHAH,	:	
	:	
Defendants.	:	
	:	
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Plaintiff Securities and Exchange Commission (the "Commission" or "SEC"), for its complaint against Spark Trading Group, LLC ("Spark Trading") and Niket Shah ("Shah") (collectively "Defendants") alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, Sections 20(b), 20(d) and 22 of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t(b), 77t(d), and 77v] and Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]; Defendants, directly or indirectly, have made use

of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged herein.

2. Venue is proper in the Eastern District of New York pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Among other things, Defendants' false and misleading statements and fraudulent schemes were made to members of the public in this District, and several of Defendants' victims reside in this District.

INTRODUCTION

3. This is an emergency action to enjoin an ongoing Ponzi scheme and to prevent Defendants from further dissipating investor funds illegally raised through their fraudulent offer and sale of securities. Since at least March 2017, Defendants have illegally obtained more than \$250,000 of funds from more than 15 investors, including investors in this District, through at least two offerings of limited liability company interests based on materially false and misleading statements made by Shah.

4. Defendants offered and sold the securities based on knowingly false and misleading statements with the intent to deceive the purchasers, employed schemes and artifices to defraud the purchasers, and engaged in transactions, practices and a course of business that operated as a fraud or deceit upon the purchasers in connection with the purchase and sale of the securities.

5. Defendants have transferred and dissipated investor funds contrary to the representations made to investors that their funds would be used to trade investment contracts. Investors' money has been transferred to Shah's personal accounts, used to pay dividends to earlier investors in a Ponzi-like scheme, and used for personal expenses of Shah; including

various entertainment expenses such as bars, restaurants, and a liquor store. As recently as February 28, 2018, Shah withdrew the remaining investor funds out of his trading account, leaving that account at a zero-balance.

6. The requested emergency injunctive relief, asset freeze, verified accounting, and expedited discovery is necessary to protect any remaining investor funds from further dissipation and to locate any remaining investor funds.

VIOLATIONS AND REQUESTED RELIEF

7. By engaging in the conduct described above, Defendants engaged in and are engaging in ongoing securities fraud in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

8. Unless the Defendants are permanently restrained and enjoined, they will continue to engage in the acts, practices, and courses of business set forth in this Complaint and in acts, practices, and courses of business of similar type and object.

9. The requested emergency injunctive relief, asset freeze, verified accounting, and expedited discovery is necessary to protect any remaining investor funds from further dissipation and to locate any remaining investor funds.

10. The Commission seeks, as immediate relief: (1) a temporary restraining order and a preliminary injunction against Defendants prohibiting them from future violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and (2) an order (a) freezing Defendants' assets; (b) permitting the Commission to conduct expedited discovery; (c)

prohibiting Defendants from destroying or altering documents; and (d) requiring Defendants to provide a verified accounting of investor proceeds.

11. The Commission also seeks a final judgment: (a) permanently enjoining the Defendants from engaging in acts, practices and courses of business alleged herein; (b) ordering Defendants to disgorge their ill-gotten gains and to pay prejudgment interest thereon; and (c) imposing civil money penalties on Defendants pursuant to Section 20(d) of the Securities Act [15 U.S.C § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

DEFENDANTS

12. **Spark Trading Group, LLC** is a New Jersey limited liability company, headquartered in Clifton, New Jersey. Spark Trading was formed by Shah in June 2017, and is controlled by him. Spark Trading is not registered with the Commission in any capacity.

13. **Niket S. Shah**, age 25, resides in Clifton, New Jersey. Shah is the owner and managing partner of Spark Trading. Shah is not registered with the Commission in any capacity.

FACTS

14. During 2016, Shah worked for a hedge fund administrator located in New York City. Hedge fund administrators are not hedge funds, financial advisors or securities traders, but instead provide back office and middle office support to hedge funds, such as accounting, bookkeeping and research services.

15. During his time at the fund administrator, Shah met a number of his future investors, including a co-worker with whom Shah cultivated a friendship ("Investor One").

16. Outside of work hours, Shah started trading binary options for his own account. Binary options are a type of financial futures contract regulated by the Commodities Futures

Trading Commission. The website for the exchange on which Defendants traded describes a binary contract as follows:

What are Binary Options?

Will *this market* be above *this price* at *this time*? Every binary option is based on that question. You *buy* the option if you think yes. Or just as easily, *sell* if you think no, it won't. Every binary option is worth \$100. The buyer and seller split the cost based on each side's probability of being right. When the trade expires, if you're right, you get the full \$100. If you are wrong, you get zero, but you can never lose more than you paid.

17. In May 2016, Shah opened an account on a binary options exchange. Shah regularly traded binary options from his personal account throughout 2016. From May 2016 through February 2017, Shah had net losses of more than \$29,000 trading binary options.

18. In March 2017, Shah informed Investor One that he was leaving the fund administrator because he had started his own investment fund, and he falsely stated that the fund had recently received its registration with the SEC. Shah said that he had developed a proprietary trading model; that he had been earning significant returns trading binary options; and that he wanted to open that investment opportunity up to other investors.

Defendants Made False and Misleading Statements to Investors In the Offer and Sale of Securities in Spark Fund I

19. Beginning in March 2017, Shah offered and sold shares of Spark Trading to investors in what they called "Spark Fund I". Shah offered 240 shares of Spark Fund I for \$1,000 per share, for a total offering of \$240,000. Shah claimed that the investment funds would be used to engage in a "proprietary trading business," which would trade exclusively in binary options and traditional stock options. The fund would pay out 75% of the trading profits per share, with the remaining 25% of the profit going to the fund.

20. Among other initial solicitations, Shah sought investment funds from Investor One. Although Investor One did not have the funds to invest with Shah at the time, Investor One recommended Spark Trading to her family and friends, including her brother (“Investor Two”). Shah likewise marketed the investment opportunity to other friends and co-workers at the fund administrator.

21. When Investor Two expressed an interest in investing, Shah sent him the offering materials for Spark Fund I.

22. In the offering materials, Defendants falsely touted the safety of the investment and the secured nature of investment funds, telling investors, **“Since the \$240,000 of equity is backed by our start-up capital, there will be absolutely NO loss incurred by you, the investor.** The amount of capital invested to purchase equity is the EXACT minimum amount you will be able to liquidate after our first year of operations.” Shah also claimed that the fund was investing in binary options and traditional stock options.

23. The offering materials further stated that investment in Spark Trading was open to anyone without restriction, and Shah specifically marketed interests in the funds to inexperienced and unsophisticated investors. Offering materials stated that “[t]here are absolutely NO prerequisites to purchasing equity in our business,” and Defendants sold interests in \$1,000 blocks to make them affordable for ordinary investors.

24. Investors were provided a “Private Equity Purchase Agreement.” Defendants directed investors to wire their investments into Shah’s personal bank account, and not into an account held in the name of Spark Trading.

25. Based on the statements and assurances made in the offering materials, Investor Two initially invested \$1,000 with Shah in May 2017. Investor Two also shared information:

about the investment opportunity with his friends (“Investor Three,” “Investor Four,” and “Investor Five”). Investor Three invested \$15,000 with Shah in May 2017. Investor Four expressed skepticism regarding the investment, and chose not to invest with Shah at that time.

26. From March 2017 through June 2017, Shah continued to suffer extensive trading losses on his binary trading. However, Shah falsely told investors that the fund was generating significant profits.

27. Despite the extensive trading losses, Shah purported to pay investor monthly dividends out of the supposed “trading profits” of Spark Fund I. In fact, in March and April 2017, the fund had not generated any trading profits out of which to pay the purported returns.

28. On June 1, 2017, Shah sent investors an email with the subject line, “Spark Trading Group Update and Trade Statement.” The attachments to the email purported to describe the performance of Spark Fund I through its first payout cycle that closed in April 2017 and to provide a statement of “transaction detail on every trade” by Spark Fund I. With respect to the first payout cycle, Shah claimed that Spark Trading had earned:

\$83,209.04 in Trading Period Profit

\$10,401.13 in Profit Per \$30K Pool

\$346.70 or 34.67% Profit Per Share

\$260.03 or 26.00% Payout (75%) Per Share

29. Defendant also claimed, based on the attached trading records, that the fund had a Winning Trade percentage of 86%, meaning that “86% of all trades we made ended up being profitable.”

30. Shah’s statements in the June 1, 2017 email were false, and the purported trading statistics and transaction records sent with the June 1, 2017 email were fabricated. Far from

earning \$83,209.04 in trading profits in March and April 2017, Shah had actually lost more than \$35,000. The transactions identified on the trade statement did not represent all of Spark Trading's trading for March 6-April 21, 2017, and in fact were not even real transactions. Instead, Shah had falsified the statements to make them appear as legitimate and authentic binary options trades to hide the substantial trading losses that he had suffered. Those trade records also served as the basis for Shah's claim of an 86% "Winning Trade %."

31. Investors received monthly "returns" out of the purported trading profits of Spark Fund I beginning in April 2017. For example, in April 2017 Investor Two received a \$141.15 return, which would equate to a 14.15% monthly return on his \$1,000 investment. Moreover, in his June 1, 2017 email to investors, Shah claimed that Spark Fund I had returned payouts of \$260.03 per share for the period March 6 through April 21, 2017, equating to a 26% return in less than two months. The monthly "returns" being paid to investors were significantly more than investors could make in other investment vehicles.

32. Investors, including Investor Two and Investor Three, were impressed with the purported above-market returns, and proceeded to invest additional funds with Shah. In June and July 2017, Investor Three invested an additional \$15,000 with Shah and in July 2017, Investor Two invested an additional \$14,000 of funds for his medical school tuition with Shah. These investors also shared news of the returns with friends and family, leading them to invest significant amounts with Shah. Among others, Investor Four, who had previously expressed skepticism about the investment, chose to invest because of the purported returns that Investor Two and Investor Three were receiving. Investor One (the sister of Investor Two), who didn't have funds to invest with Shah in March, managed to save \$1,000 which she invested in Spark Fund I in July 2017.

33. Investor One likewise informed another friend (“Investor Six”) of the significant purported returns that other investors were receiving from Spark Trading. Interested in the significant monthly returns, Investor Six requested the offering materials from Shah. Skeptical of the investment, Investor Six then asked Shah how she could know that this was not some “Madoff-ish type Ponzi scheme.” Shah responded in a return email that, “Since we're actively trading to develop these strategies, the profits we yield will be returned to you, the shareholder. Your consistent payouts provide proof of concept for our strategies. It will show they can be used to provide a significant ROI and will make our products that much more attractive to firms who may want to buy them down the road (2+ years).”

34. Shah sent Investor Six purported screenshots from his bank account purporting to show \$200,000 of the \$250,000 in venture capital funds being deposited into his binary options trading account on February 25, 2017. The bank statements that Shah provided to Investor Six were fake. In fact, no such deposits had been made into Defendants’ binary options trading account and the ending balance in Defendants’ account at the end of February 2017 was a mere \$10.50 – not \$200,000 as represented by Shah.

35. Based on Shah’s falsified documents and misrepresentations, Investor Six invested \$10,000 with Defendants in June 2017 and recommended the investment to her mother, a retiree (“Investor Seven”). In July and August 2017, Investor Six invested an additional \$9,000 of funds for her two sons, and Investor Seven invested \$1,000 as well.

**Defendants Made False and Misleading Statements to Investors
In the Offer and Sale of Securities in Spark Fund II**

36. In August 2017, Defendants began seeking additional investor funds by offering interests in a second Spark Trading fund (“Spark Fund II”). Defendants announced the second round offering through a “Shareholder Look-in” dated August 2017. In the offering brochure

advertising the Spark Fund II offering, Defendants touted the trading profits from Spark Fund I, claiming they had an average monthly return per share of 11.920%. In the Spark Fund II offering materials, Defendants claimed that they raised the full \$240,000 in funding from Spark Fund I through 63 investors, that they had obtained additional venture capital funding and that investors' "entire investment is guaranteed." Shah also told investors that he was trading approximately \$50,000 in traditional options.

37. Defendants' representations were false. Spark Fund I was not profitable and the purported returns were non-existent. Moreover, Shah had actually deposited and traded only \$1,2000 in traditional options accounts.

38. Interests in Spark Fund II were again marketed to unsophisticated investors, as set forth in an offering brochure:

"A majority of people today are either intimidated by, confused about, or just don't have the time or desire to get into trading financial markets. On top of this, many either don't have the funds necessary to see returns that are attractive enough, or are not getting an attractive enough return from the investments they currently maintain (savings accounts, mutual funds, etc.). Throw in a general sense of mistrust when it comes to "Wall Street" in a post-2008 crisis world and you get a situation where *regular, middle class folk are less likely to benefit from free markets than ever before. . . . This is why our minimum investment is only \$1,000 [and] your entire investment is guaranteed.*"

39. Defendants' misrepresentations caused investors to invest additional funds. After receipt of the Shareholder Look-In, Investor Three invested more than \$50,000 in additional funds with Defendants.

40. Investor Three wired part of those additional funds into a business account in the name of Spark Trading Group, LLC for his investment in Spark Fund II in September and November 2017.

Defendants Misappropriated Investors' Money

41. Investor funds wired into the Spark Fund II account were quickly dissipated by Shah. A small amount of the new investor funds were used to pay dividends to earlier investors, with the bulk of the funds transferred to personal accounts in the name of Shah. Other amounts were spent on personal entertainment, including bars, restaurants, and liquor store purchases.

42. Investor Three wired \$30,000 of additional funds into Spark Trading's account on September 27, 2017. However, in October 2017, Defendants' payments to investors were delayed.

43. In November 2017, Spark Trading continued to have problems making payouts to some of its investors, and informed investors that Spark Trading would be shutting down temporarily to resolve the issue.

44. On November 27, 2017, Investor Three wired \$21,924.04 into Spark Trading's account. Spark Trading made no further payments to investors after November 2017.

45. By early December 2017, Spark Trading Group, LLC's bank account had a negative balance.

Defendants Provide Numerous False Explanations for their Inability to Produce Investor Funds

46. Beginning in November 2017, Shah's communications with investors became sporadic and included numerous false and misleading excuses for their inability to pay investor funds:

47. On November 3, 2017, Shah sent investors an email stating that the October 2017 monthly dividend payout was delayed due to a payment processor hold, and that the hold would be lifted after midnight on November 3, when payments would then resume. That did not happen, and on November 17, 2017 Shah emailed investors saying that payout delays continued

to be problematic, and that Spark Trading would be shutting down temporarily and reopening on December 4, 2017.

48. On December 10, 2017, Shah sent investors an email notification stating that Spark Trading would be ceasing all business operations and shutting down immediately. In this and subsequent communications to investors, Defendants made the following false excuses for his inability to pay returns:

- Spark Trading's shutdown was "due to a court-ordered mandate received from the Internal Revenue Service (IRS) in conjunction with the Security [sic] and Exchange Commission (SEC)."
- "The residence at which we were founded and have operated from since our inception in March of this year was subject to search by federal agents on Thursday, November 30, 2017, resulting in 2 of our managing partners being detained for 48 hours."
- "The \$1.2 million in total funds Spark controlled (operating income, both funds, and backup capital) have been seized by the IRS for the time being."
- Spark Trading was scheduled to appear before the SEC on December 12, 2017 at the SEC's New York Regional Office.

49. Defendants' excuses to investors were false and misleading. The SEC was not involved in any litigation or regulatory proceeding involving Spark Trading or Shah at the time. The SEC had not seized or frozen any assets of Shah or Spark Trading. Neither Shah nor Spark Trading were scheduled to appear in any proceeding before the SEC in December. Spark Trading did not control \$1.2 million in funds in December 2017. In fact, the company had lost substantial amounts trading and Defendants' business and personal accounts had been depleted and had a negative balance.

50. As of January 2018, Defendants told investors further falsehoods, including that the government would be releasing funds on a schedule and that those funds would then be returned to investors. In fact, no funds had been seized at that time by the SEC. In addition, at

the time he made those statements, Spark Trading's business account had a negative balance all investor funds having been transferred to Shah's personal account or spent.

Continued Harm to Investors is Threatened

51. Defendants have already dissipated and misappropriated investor funds by transferring them to Shah's personal accounts, paying early investor dividends with new investor capital, and using investor funds for personal entertainment expenses of Shah.

52. On February 28, 2018, Shah transferred the last \$1,067.25 out of his binary options trading account.

53. As of March 1, 2018, Shah's business bank account had a negative balance, Shah's options account had a negative balance, and Shah's binary option account had a zero-balance. Shah has personal bank accounts, but Plaintiff is currently unaware whether there are funds in those accounts. In addition, Defendants may have additional bank accounts into which assets have been transferred.

54. Absent emergency injunctive relief from the Court, it is likely that further dissipation and misappropriation of any remaining investor funds will occur. Plaintiff requires emergency relief in order to secure any remaining investor funds, identify where investor funds have been transferred or spent and to determine whether Defendants have additional assets that can be seized to monetize investor funds.

FIRST CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rule 10b-5

55. The Commission repeats, realleges and incorporates by reference paragraphs 1 through 54, as though fully set forth herein.

56. By virtue of the foregoing, Defendants, directly or indirectly, by the use of the means and instrumentalities of interstate commerce or of the mails, in connection with the

purchase or sale of securities, knowingly or recklessly, employed devices, schemes, or artifices to defraud, and engaged in acts, practices, and courses of business which operate or would operate as a fraud or deceit; and made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

57. By virtue of the foregoing, Defendants violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder.

SECOND CLAIM FOR RELIEF
Violations of Securities Act Section 17(a)

58. The Commission repeats, realleges and incorporates by reference paragraphs 1 through 57, as though fully set forth herein.

59. By virtue of the foregoing, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly: (a) Defendants employed devices, schemes or artifices to defraud; (b) Defendants obtained money or property by means of an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c) Defendants engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit upon the purchaser.

60. By reason of the conduct described above, Defendants, directly or indirectly violated and, unless enjoined will again violate, Securities Act Section 17(a) [15 U.S.C. § 77q(a)(1), (a)(3)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court grant the following relief:

I.

An Order temporarily and preliminarily, and a Final Judgment permanently, restraining and enjoining Defendants, and each of their respective agents, servants, employees, attorneys and other persons in active concert or participation with each of them who receive actual notice of the injunction by personal service or otherwise, from any future violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5] issued thereunder;

II.

An Order temporarily and preliminarily freezing all of Defendants' assets;

III.

An Order temporarily and preliminarily enjoining and restraining Defendants, and any person or entity acting at their direction or on their behalf, from destroying, altering, concealing or otherwise interfering with the access of the Commission to relevant documents;

IV.

An Order providing that the Commission may take expedited discovery;

V.

An Order directing Defendants to file with this Court and serve upon the Commission, within three (3) business days, or within such extension of time as the Commission staff agrees to, a verified accounting, signed by each Defendant, and under penalty of perjury;

VI.

A Final Judgment directing each of the Defendants to disgorge all ill-gotten gains, including prejudgment interest thereon;

VII.

A Final Judgment directing the Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

VIII.

Such other and further relief as this Court deems appropriate and necessary for the benefit of investors pursuant to Exchange Act Section 21(d)(5) [15 U.S.C. § 78u(d)(5)].

Dated: Washington, DC
March 11, 2018

SECURITIES AND EXCHANGE COMMISSION

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