

BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES

In the Matter of,

SUMMARY ORDER TO CEASE AND
DESIST AND REVOKING EXEMPTIONS

MIND CAPITAL aka
MIND CAPITAL OU aka
MIND CAPITAL TECH SL,
GONZALO GARCIA-PELAYO, and
OSCAR GARCIA-PELAYO,

Respondents.

DFI Case No. S-242028 (EX)

I.

The Administrator of the State of Wisconsin, Department of Financial Institutions, Division of Securities (“Division”), having legal authority and jurisdiction to administer and enforce the Wisconsin Uniform Securities Law, Wis. Stats. Ch. 551 (“Ch. 551”) and rules and orders promulgated thereunder, and having determined that this action is necessary and appropriate in the public interest and for the protection of investors, hereby enters this Order as follows:

II.

Division staff have presented evidence sufficient for the Administrator to make the following findings of fact and conclusions of law:

A. Findings of Fact

Respondents

1. Mind Capital aka Mind Capital OU aka Mind Capital Tech SL (“Mind Capital”) is a Spanish and Estonian domiciled company which maintains last known addresses of Calle de Juan de Mariana, 15, 28045 Madrid, Spain and Lõõtsa tn 5-11, 11415 Tallinn, Estonia.
2. Gonzalo Garcia-Pelayo (“GGP”) is the president and chief executive officer of Mind Capital. His last known addresses are Calle de Juan de Mariana, 15, 28045 Madrid, Spain and Lõõtsa tn 5-11, 11415 Tallinn, Estonia.
3. Oscar Garcia-Pelayo (“OGP”) is the vice-president of Mind Capital. His last known addresses are Calle de Juan de Mariana, 15, 28045 Madrid, Spain and Lõõtsa tn 5-11, 11415 Tallinn, Estonia.

Conduct

4. Gerald Walker (“Walker”) is an adult male with a last known address of 3148 Thomas Street, Jackson, FL 32254. In 2004, Walker (CRD# 4774349) was briefly employed by PFS Investments, Inc., of Jacksonville, FL, but he never completed any qualification exams to become a securities agent.
5. Respondents maintain a website at <https://mind.capital> which describes how to participate in a cryptocurrency investment program.
6. According to the Mind Capital website, Respondents are offering for sale investments in Mind Capital’s crypto/fiat arbitrage trading program, which requires investors to use Bitcoin to purchase Mind Capital’s exclusive “internal use” utility token, MCcoin.
7. Respondents claim MCcoin is unalterable and is always equal to \$1.00.
8. Respondents further represent that by using advanced algorithms they are able to analyze “the evolution of the main crypto assets and their sale price in different currencies and find the optimum moments of buying and selling.”
9. According to the Mind.Capital website, the crypto/fiat arbitrage trading program is earning between 0.5% and 1.5% in returns daily.
10. Respondents through their website further represent that in addition to receiving daily returns between 0.5% and 1.5%, investors can receive additional funds by participating in Mind Capital’s referral plan.
11. Under the referral plan, an existing investor may receive up to 8% of the profits earned by a new investor who the existing investor referred to the crypto/fiat arbitrage trading program.
12. Respondents through their agent Walker published advertisements on Craigslist which targeted residents of Janesville, Kenosha and Racine in Wisconsin. Similar to the Mind Capital website, the Mind Capital advertisements stated in relevant part:

Our Company, MindCapital, has developed an Artificial Intelligence that simultaneously buys and sells Securities, Currencies, or Commodities, even Crypto Currencies in different markets in order to take advantage of the differing prices for the same asset. We get paid a percentage of the profits generated.

In MindCapital, the profits are obtained by crypto / fiat arbitration operations and the members participate with a distribution of 65% / 35% of the profits, which means that the member receives 65% of the gross profits and the platform receives 35% for network bonus and platform

improvement.

The income reflected on the web platform is GROSS, that is, the net percentage of the members is on average 0.8% per day. It might not seem like a lot, but with the ability to compound your earnings it can grow massively.

1. There is a minimum contribution of \$40 USD and a maximum of \$100,000 USD.
2. Payments of the returns obtained are made daily from Monday to Friday into your own portfolio on the platform.
3. These returns are available to be withdrawn to an external wallet when the value exceeds \$50 USD, with a maximum of \$10,000 USD per day.
4. The initial capital can be withdrawn after 90 days of your contribution.
5. There is no withdrawal commission, either for performance or for capital. Only Blockchain fees to process transactions when we deposit or withdraw Bitcoin.

MindCapital combines high profitability with high liquidity.

We have been on the platform only a very short time, but we have team members already exceeding profits of in excess of \$1,800+ USD DAILY!!!

13. On August 10, 2020, Walker solicited an investment in Mind Capital via telephone from a Wisconsin resident who saw a Craigslist advertisement for the investment program. According to Walker, Mind Capital has software which links to cryptocurrency platforms, looking for differences in pricing. The Mind Capital software buys from a platform at the lowest price and sells on another platform at the highest price. Walker said Mind Capital also trades in the forex market by conducting arbitrage trades, where they also buy low and sell high.
14. Walker further represented that Mind Capital needs Bitcoin to buy and sell on the market. First, investors buy Bitcoin and transfer it to Mind Capital. Then Mind Capital converts the Bitcoin received from investors to MCcoins valued at \$1.00 each. Walker encouraged the Wisconsin investor to purchase his Bitcoin using the Cash App platform because he could transfer it out instantly to Mind Capital. Walker also recommended the Wisconsin investor start with an initial purchase of \$40.00 so that he could familiarize himself with the features of the Mind Capital “back office.”
15. Walker also informed the Wisconsin resident that he could earn a commission from the earnings of other Mind Capital investors that the resident refers to the program. As explained by Walker, Mind Capital splits the daily profits by distributing 65% to the investor and 35% to Mind Capital. An investor who earns commissions from referrals is paid from Mind Capital’s 35% share of the profits. As the value of the referred investor’s account grows, the commission paid to the referring investor grows too.

16. On or about January 13, 2020, the Comision Nacional del Mercado de Valores, which is the National Securities Market Commission of Spain, issued a public warning that Mind Capital was not authorized to provide investment services per Article 140 and 141 of the Securities Markets Law of Spain.
17. On July 16, 2020, the Texas State Securities Board issued an Emergency Cease and Desist Order against Mind Capital, GGP, OGP and others for offering unregistered securities, for offering securities in the state of Texas without being registered as broker-dealers, and for engaging in fraud in connection with the offer for sale of securities.
18. The Respondents and Walker never disclosed to the Wisconsin resident the prior regulatory actions against the Respondents.
19. The crypto/fiat arbitrage trading program has never been registered as a security in Wisconsin nor is it exempt or a federal covered security.
20. The Respondents have never been registered with the Division in any capacity.

B. Conclusions of Law

Legal Authority and Jurisdiction

21. The Administrator has legal authority and jurisdiction over the conduct described above pursuant to Wis. Stats. Ch. 551 and the rules and orders promulgated thereunder.
22. Pursuant to Wis. Stat. § 551.102(28), Mind Capital's crypto/fiat arbitrage trading program meets the definition of a security.
23. Pursuant to Wis. Stat. § 551.301, it is unlawful for a person to offer or sell a security in this state unless the security is registered in this state, is a federal covered security, or is exempt from registration under Ch. 551.
24. Pursuant to Wis. Stat. § 551.102(4), a "broker-dealer" is a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.
25. The Respondents transacted business as a broker-dealer in Wisconsin through their conduct described ¶¶ 5-15.
26. Pursuant to Wis. Stat. § 551.401(1) and § DFI-Sec. 1.02(5), Wis. Admin. Code, it is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration as a broker-dealer under Wis. Stat. §§ 551.401(2) or (4) or Wis. Stat. § 551.205(1)(b)(2).

27. Pursuant to Wis. Stat. § 551.501(2), it is unlawful for a person, in connection with the offer or sale of securities, directly or indirectly, to make an untrue statement of a material fact or to omit 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.

Violations

28. Through the conduct described above, the Respondents violated Wis. Stat. § 551.401(1) when they transacted business as a broker-dealer in this state without being registered or exempt from registration under Ch. 551.
29. Through the conduct described above, the Respondents violated Wis. Stat. § 551.301 by offering to sell unregistered securities in this state that were not exempt from registration and were not federal covered securities.
30. Through the conduct described above, the Respondents violated Wis. Stat. § 551.501(2) when they made untrue statements of material facts and omitted material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading in connection with the offer of securities, including but not limited to falsely representing daily returns between 0.5% and 1.5%, and failing to disclose prior regulatory actions against them.

III.

In view of the above findings of fact and conclusions of law, the Administrator deems it necessary and appropriate in the public interest and for the protection of investors, and pursuant to its legal authority and jurisdiction under Ch. 551, to wit Wis. Stat. § 551.604, to issue the following orders and notices:

A. Summary Orders issued pursuant to Wis. Stat. § 551.604(2)

- (a) IT IS ORDERED summarily that RESPONDENTS, their agents, servants, officers, employees, successors, affiliates, and every entity and person directly or indirectly controlled or organized by or on behalf of the RESPONDENTS, shall cease and desist from making or causing to be made to any person or entity in Wisconsin any further offers or sales of securities unless and until such securities qualify as federal covered securities, federal exempt securities or are registered under Ch. 551 or successor statute, pursuant to Wis. Stat. §§ 551.604(1)(a) and (2).
- (b) IT IS FURTHER ORDERED that all exemptions from registration set forth at Ch. 551 or successor statute that might otherwise apply to any offer or sale of any security of or by the RESPONDENTS, their agents, servants, officers, employees, successors, affiliates, and every entity and person directly or indirectly controlled

or organized by or on behalf of the RESPONDENTS, are hereby revoked, pursuant to Wis. Stats. §§ 551.604(1)(b) and (2).

- (c) IT IS FURTHER ORDERED that all exemptions from registration set forth in Wis. Stat. §§ 551.201 and 551.202 that may otherwise apply to a specific security, transaction or offer of or by the RESPONDENTS, their agents, servants, officers, employees, successors, affiliates, and every entity and person directly or indirectly controlled or organized by or on behalf of the RESPONDENTS, are hereby revoked, pursuant to Wis. Stats. §§ 551.604(1)(c) and (2).
- (d) IT IS FURTHER ORDERED summarily that RESPONDENTS, their successors, affiliates, controlling persons, officers, agents, servants, employees and every entity and person directly or indirectly controlled or hereafter organized by or on behalf of the RESPONDENTS, are prohibited from violating Wis. Stat. § 551.501 or successor statute.
- (e) IT IS FURTHER ORDERED summarily that RESPONDENTS, their successors, affiliates, controlling persons, officers, agents, servants, employees, and every entity and person directly or indirectly controlled or hereafter organized by or on behalf of the RESPONDENTS, are prohibited from violating Ch. 551 or successor statute that might otherwise apply to any offer or sale of a security of or by RESPONDENTS.
- (f) PLEASE TAKE NOTICE that the summary orders of the Administrator are effective as of the issuance of this order, pursuant to Wis. Stat. § 551.604(2).

B. Service of Order

- (g) IT IS FURTHER ORDERED that this order shall be sent promptly by registered mail to each party named in the order at his or her last known address or to the party's attorney of record, or shall be personally served upon the party or the party's attorney of record, pursuant to Wis. Admin. Code § DFI-Sec. 8.06. This order shall also be served upon the office of the administrator pursuant to Wis. Stat. § 551.611.
- (h) PLEASE TAKE NOTICE that if service is by registered mail, the date of the service of this order is the date it is placed in the mail. If service is by personal service, the date of the service of this order is the date personal service is completed.

C. Notice of Hearing Rights

- (i) PLEASE TAKE NOTICE that you have the right to request a hearing. Every request for a hearing shall be in the form of a written petition filed with the Division, pursuant to Wis. Admin. Code § DFI-Sec. 8.01 and Wis. Stat. § 227.42. A petition for a hearing to review the order shall:

- (1) Plainly admit or deny each specific allegation, finding or conclusion in the order and incorporated papers. However, if the petitioner lacks sufficient knowledge or information to permit an admission or denial, the petition shall so state, and that statement shall have the effect of a denial; and
 - (2) State all affirmative defenses. Affirmative defenses not raised in the request for hearing may be deemed waived.
- (j) PLEASE TAKE FURTHER NOTICE that you may file your written petition:
- (1) By mailing the written petition to:
Division of Securities
Wisconsin Department of Financial Institutions
P.O. Box 1768
Madison, Wisconsin 53701-1768;
 - (2) By delivering the written petition in person to:
Division of Securities
Wisconsin Department of Financial Institutions
4822 Madison Yards Way, North Tower, 4th Floor
Madison, Wisconsin 53705; or
 - (3) By faxing the written petition to 608-264-7979.
- (k) PLEASE TAKE FURTHER NOTICE that the petition for hearing must be filed with the Division. Pursuant to Wis. Stat. § 551.102(8), “filing” means “receipt.” Therefore, a petition is not “filed” with the Division until it is actually “received” by the Division. If the Division does not receive your written petition before midnight on the 30th day after the date of service of this order, your right to a hearing will be waived and the Summary Order shall become final by operation of law.
- (l) PLEASE TAKE FURTHER NOTICE that, within 15 days after receipt of a request in a record from you, the matter will be scheduled for a hearing or other public administrative proceedings, pursuant to Wis. Stats. §§ 551.604(2) and (3).
- (m) PLEASE TAKE FURTHER NOTICE that if you do not request a hearing and none is ordered by the Administrator within 30 days after the date of service of this order, the findings of fact, conclusions of law, and summary orders become final as by operation of law, pursuant to Wis. Stat. § 551.604(2), and the order may be filed as a certified final order with the clerk of a court of competent jurisdiction pursuant to Wis. Stat. § 551.604(6).
- (n) PLEASE TAKE FURTHER NOTICE violations of this order may be enforced by any investor, or by the Division pursuant to Wis. Stat. § 551.604(7) whether acting in its

own right or on behalf of the investor, by petitioning any court of competent jurisdiction to enforce the terms of the order.

- (o) PLEASE TAKE FURTHER NOTICE failure to provide a copy of this Order to prospective investors may be a material misrepresentation in violation of Ch. 551 and this Order.
- (p) PLEASE TAKE FURTHER NOTICE that any willful violation of an Order issued by the Division under Ch. 551 is a criminal offense punishable under the provisions of Wis. Stat. § 551.508.

EXECUTED at Madison, Wisconsin, and effective on this 21st day of October, 2020.



Leslie M. Van Buskirk

Leslie M. Van Buskirk
Administrator

Division of Securities
State of Wisconsin
Department of Financial Institutions
4822 Madison Yards Way
North Tower, 4th Floor
Madison, Wisconsin 53705



State of Wisconsin
Department of Financial Institutions

Tony Evers, Governor

Kathy Blumenfeld, Secretary

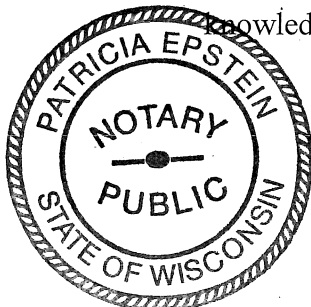
**AFFIDAVIT OF SERVICE
 AND COMPLIANCE WITH WIS. STAT. § 551.611**

STATE OF WISCONSIN)
) ss.
 COUNTY OF DANE)

I, KATHERINE CLEMENTI, first being duly sworn, depose and state:

1. I am employed with the State of Wisconsin, Department of Financial Institutions, Division of Securities.
2. On the date of this Affidavit and in the course of regularly conducted activity, I have caused to be served by registered mail upon Gonzalo Garcia-Pelayo at his last known address of Calle de Juan de Mariana, 15, 28045 Madrid, Spain:
 - i. A copy of the Cover Letter, Summary Order to Cease and Desist and Revoking Exemptions; DFI Case No. S-242028 (EX); and
 - ii. A copy of this Affidavit of Service.
3. In compliance with Wis. Stat. §§ 227.48, 551.611, and 891.46; and Wis. Admin. Code. §§ DFI-Sec 8.06 and 8.07, I have also caused to be served copies of those same documents upon the Administrator for the Division of Securities.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



Katherine Clementi

KATHERINE CLEMENTI

State of Wisconsin
 Department of Financial Institutions
 Division of Securities

Subscribed and sworn to before me

This 23 day of October, 2020.

Patricia Epstein

(Notary Seal)

Notary Public, State of Wisconsin

My commission expires 1-7-24.

Division of Securities

Mail: PO Box 1768 Madison, WI 53701-1768
 Courier: 4822 Madison Yards Way, Madison, WI 53705
 Voice: (608) 261-9555 Fax: (608) 264-7979 Web: www.wdfi.org



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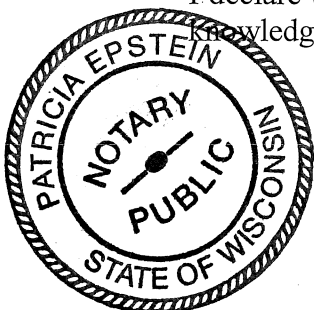
**AFFIDAVIT OF SERVICE
AND COMPLIANCE WITH WIS. STAT. § 551.611**

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

I, KATHERINE CLEMENTI, first being duly sworn, depose and state:

1. I am employed with the State of Wisconsin, Department of Financial Institutions, Division of Securities.
2. On the date of this Affidavit and in the course of regularly conducted activity, I have caused to be served by registered mail upon Oscar Garcia-Pelayo at his last known address of Calle de Juan de Mariana, 15, 28045 Madrid, Spain:
 - i. A copy of the Cover Letter, Summary Order to Cease and Desist and Revoking Exemptions; DFI Case No. S-242028 (EX); and
 - ii. A copy of this Affidavit of Service.
3. In compliance with Wis. Stat. §§ 227.48, 551.611, and 891.46; and Wis. Admin. Code. §§ DFI-Sec 8.06 and 8.07, I have also caused to be served copies of those same documents upon the Administrator for the Division of Securities.

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Katherine Clementi

KATHERINE CLEMENTI

State of Wisconsin
Department of Financial Institutions
Division of Securities

Subscribed and sworn to before me

This 23 day of October, 2020.

Patricia Epstein (Notary Seal)

Notary Public, State of Wisconsin

My commission expires 1-7-24.

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