

**IN THE UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF LOUISIANA**

**COMMODITY FUTURES TRADING  
COMMISSION,**

**Plaintiff,**

**v.**

**CAPITAL FUNDING CONSULTANTS,  
L.L.C.,**

**WILLIAM CHARLES GUIDRY,**

**and**

**MATTHEW BRIAN PIZZOLATO,**

**Defendants.**

Civil Action No.

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AND  
FOR CIVIL PENALTIES UNDER THE COMMODITY EXCHANGE ACT**

Plaintiff, Commodity Futures Trading Commission (“Commission” or “CFTC”),

by and through its attorneys, alleges as follows:

**I. Summary**

1. From at least November 2004 to at least July 2008 (“relevant time”), defendants William Charles Guidry (“Guidry”), Matthew Brian Pizzolato (“Pizzolato”) and Capital Funding Consultants, L.L.C. (“Capital Funding”), a company that Guidry owned and controlled (collectively “defendants”), defrauded at least 15 members of the public, most of whom are elderly and reside in southeastern Louisiana, of more than \$2

million. Pizzolato solicited an overall sum of approximately \$19.5 million from approximately 160 individuals for the purpose of investing in purportedly safe, secure investments with specified guaranteed rates of return, such as Treasury Bills, annuities or Certificates of Deposit. However, Pizzolato gave more than \$2 million of the funds solicited to Guidry who deposited their funds into Capital Funding's bank account where they were commingled with Capital Funding's funds. Guidry pooled the investor funds and traded commodity futures with those funds through accounts in the name of Capital Funding, resulting in trading losses. Pizzolato did not disclose this futures trading activity to participants and did not disclose the losses that the pool had incurred in the commodity futures trading accounts. Finally, Guidry used some of the funds received from participants for his own personal purposes, including the payments of fees to Guidry that were never disclosed to the participants, totaling at least \$135,000.

2. Specifically, by the aforementioned conduct, the defendants have engaged, are engaging, or are about to engage in fraudulent acts and practices that violate the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1 *et seq.* (2006), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008) ("CRA"), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008). The defendants have violated the anti-fraud provisions, Sections 4b(a)(2)(i) and (iii), 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), and 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006). In addition, Capital Funding and Guidry have violated Commission Regulation ("Regulation") 4.20, 17 C.F.R. § 4.20 (2009).

3. Unless restrained and enjoined by this Court, defendants are likely to continue to engage in the acts and practices alleged in this Complaint and in similar acts and practices, as more fully described below.

4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), the Commission brings this action to enjoin such acts and practices, prevent the dissipation of assets, and compel compliance with the provisions of the Act and the Regulations thereunder. In addition, the Commission seeks civil monetary penalties, an accounting, restitution, rescission, disgorgement, pre-judgment and post-judgment interest, and such other equitable relief as the Court may deem necessary or appropriate under the circumstances.

## II. Jurisdiction and Venue

5. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

6. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e) (2006), in that the defendants are found in, inhabit, or transact business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District, among other places.

### III. The Parties

7. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2006), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2009).

8. Defendant **William Charles Guidry** is 35 years old and currently resides in Jacksonville, Florida, but during the relevant time lived in Lacombe, Louisiana. He is a managing member of Capital Funding. At all relevant times, Guidry had a power of attorney to trade the Capital Funding commodity futures trading accounts at two registered futures commission merchants (“FCMs”) located in Chicago, Illinois, MF Global, Inc. (“MFG”) and R. J. O’ Brien & Associates, L.L.C. (“RJO”). Guidry was registered as an associated person (“AP”) of Capital Funding from July 14, 2005 until June 13, 2007, when his registration was withdrawn.

9. Defendant **Matthew Brian Pizzolato** is 26 years old and resides in Tickfaw, Louisiana. Pizzolato has never been registered with the Commission in any capacity.

10. Defendant **Capital Funding Consultants, L.L.C.** is an unincorporated membership organization formed under the Louisiana Limited Liability Act on November 15, 2002, whose office was in Covington, Louisiana. Guidry is a member manager of Capital Funding. During the relevant time, Capital Funding had accounts through which it traded commodity futures and options at MFG and RJO. Capital Funding was registered with the Commission as a commodity pool operator (“CPO”)

from January 26, 2005 through October 28, 2005 when that registration was withdrawn and was registered as an Introducing Broker (“IB”) from November 7, 2005 until June 13, 2007 when that registration was withdrawn.

#### IV. Statutory and Regulatory Background

11. A commodity “pool” is defined in Regulation 4.10(d)(1), 17 C.F.R. § 4.10(d)(1) (2009), as any investment trust, syndicate or similar form of enterprise engaged in the business of investing its pooled funds in trading commodity futures and/or commodity options.

12. A “commodity pool operator” is defined in Section 1a(5) of the Act, 7 U.S.C. § 1a(5) (2006), as any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market.

13. A commodity pool “participant” is defined in Regulation 4.10(c), 17 C.F.R. § 4.10(c) (2009), as any person who has any direct financial interest in a commodity pool.

14. An “associated person” of a CPO is defined in Regulation 1.3(aa)(3), 17 C.F.R. § 1.3(aa)(3) (2009), as a natural person associated with a CPO “as a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of

funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged.”

15. Regulation 4.20(a), 17 C.F.R. § 4.20(a) (2009), prohibits a CPO from failing to operate its pool as an entity cognizable as a legal entity separate from that of the pool operator.

16. Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2009), prohibits a CPO from accepting funds from participants for a pool that it operates other than in the pool’s name.

17. Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2009), prohibits a CPO from commingling the property of any pool that it operates or that it intends to operate with the property of any other person.

18. Under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2009), the omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

19. Under Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), any person who, directly or indirectly, controls any person who has violated the Act or Regulations may be held liable for such violations to the same extent as such controlled person, if the controlling person did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the violations.

## V. Facts

### The Defendants Cheated and Defrauded Pool Participants

20. From at least November 2004, Pizzolato and Capital Funding solicited individuals for investment in purportedly safe, secure investments with guaranteed rates of return, such as Certificates of Deposit (“CDs”), Treasury Bills or annuities. Guidry and Pizzolato agreed that Pizzolato would give Guidry a portion of the funds he had solicited and that Guidry would use some of those funds to trade commodity futures and commodity options.

21. Pizzolato solicited investors but, in doing so, did not reveal his actual plans for the use of their funds, including his plan to give some investors’ funds to Guidry to trade commodity futures.

22. Pizzolato received approximately \$19.5 million from approximately 160 investors, typically in the form of personal or third-party checks endorsed by the investors. Some of the third-party checks from investors represented a liquidation of their legitimate annuity investments and/or retirement savings.

23. Pizzolato did not use investor funds in the manner that he had represented to prospective investors. Instead, he gave more than \$2 million of funds from at least 15 investors to Guidry, pursuant to their agreement that Guidry would engage in commodity futures and commodity options trading with some of those funds, an investment strategy that was not disclosed to investors.

24. Guidry knew that the funds he received from Pizzolato were from investors.

25. Guidry and Capital Funding accepted the investor checks received from Pizzolato, including personal checks and third-party checks that had been endorsed by the investors, made payable to Capital Funding, and deposited them into the Capital Funding corporate checking account that Guidry controlled. The investors' funds were commingled with other Capital Funding money in the Capital Funding bank account.

26. More than \$500,000 of participant funds were received by Capital Funding while that entity was registered as a CPO and more than \$1.5 million of participant funds were received by Capital Funding after it had withdrawn its registration as a CPO.

27. In the account opening documents for the Capital Funding commodity futures trading accounts at MFG and RJO, Guidry identified himself as the managing member of Capital Funding and represented that no other persons had a financial interest in those trading accounts. Those statements were false because these accounts were funded solely with funds from participants.

28. Guidry made the trading decisions for the Capital Funding commodity trading accounts during the relevant time. The Capital Funding trading accounts at both MFG and RJO lost money trading futures and options. Guidry's trading activity was not disclosed to most participants and the trading losses were not disclosed to any of the participants.

29. Guidry controlled Capital Funding in that he is a managing member of Capital Funding, an authorized signatory on the Capital Funding bank accounts, and the person who opened and controlled the Capital Funding commodity futures trading accounts.

30. Guidry, acting individually or as an agent for, and a controlling person of, Capital Funding, defrauded participants by misappropriating at least \$135,000 of participant funds for his personal expenses. Capital Funding was registered as a CPO for a short time when those transactions were made. At present, the vast majority of the more than \$2 million that Guidry received from participants has not been returned.

VI. Violations of the Commodity Exchange Act  
and Commission Regulations

Count I

Violations of Section 4b(a)(2)(i) and (iii) of the Act and  
Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA:  
Defendants Cheated and Defrauded Pool Participants

31. The allegations set forth in paragraphs 1 through 30 are re-alleged and incorporated herein.

32. Guidry and Capital Funding misappropriated at least \$135,000 of pool participant funds.

33. Pizzolato and Capital Funding made misrepresentations or failed to disclose material facts to participants and prospective participants, including representing that their funds would be invested in safe, secure investments with guaranteed rates of return, such as CDs, Treasury Bills or annuities and failing to disclose the fact of the commodity futures trading and Guidry's trading losses and other losses with their investment funds.

34. Defendants engaged in this conduct in or in connection with orders to make, or the making of, contracts of sale of commodities, for future delivery, made, or to be made, for or on behalf of such other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof.

35. Defendants therefore violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), with respect to acts occurring before June 18, 2008, and violated Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), with respect to acts occurring on or after June 18, 2008.

36. The actions and omissions of Guidry and Pizzolato described in this count were done within the scope of their employment or office with Capital Funding. Therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2009), Capital Funding is liable for their acts and omissions and therefore Capital Funding violated Section 4b(a)(2)(i) and (iii) of the Act and Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA

37. Guidry, directly or indirectly, controlled Capital Funding and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Capital Funding's violations alleged in this count. Guidry is thereby liable for Capital Funding's violations of Section 4b(a)(2)(i) and (iii) of the Act and Sections 4b(a)(1)(A) and (C) of

the Act as amended by the CRA, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

38. Each act of misappropriation, misrepresentation or failure to disclose a material fact during the relevant time, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2006), with respect to acts occurring before June 18, 2008, and Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), with respect to acts occurring on or after June 18, 2008 .

## Count II

### Violations of Section 4o(1) of the Act:

#### Commodity Pool Fraud

39. Paragraphs 1 through 30 are realleged and incorporated herein.

40. During the relevant time, Capital Funding acted as a CPO, Pizzolato acted as an AP of Capital Funding, and Guidry was registered as an AP of Capital Funding

41. In connection with the acts and practices described in paragraphs 1 through 30, Guidry, Capital Funding and Pizzolato used or are using the mails and other means or instrumentalities of interstate commerce.

42. During the relevant time, Guidry, Capital Funding and Pizzolato violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006), in that they directly or indirectly employed or are employing a device, scheme, or artifice to defraud commodity pool participants, or have engaged or are engaging in transactions, practices or a course of business which operated as a fraud or deceit upon commodity pool participants by means of the acts and practices described in paragraphs 1 through 30.

43. Guidry, directly or indirectly, controlled Capital Funding and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Capital Funding's violations alleged in this count. Guidry is thereby liable for Capital Funding's violations of Section 4o(1) of the Act pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

44. The actions and omissions of Guidry and Pizzolato described in this count were done within the scope of their employment or office with Capital Funding. Therefore, Capital Funding is liable for Guidry's and Pizzolato's acts and omissions and therefore Capital Funding violated Section 4o(1) of the Act pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2009).

45. Each act of misappropriation, misrepresentation or failure to disclose a material fact during the relevant time, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

### Count III

#### Violation of Regulation 4.20:

#### Failing to Operate the Pool as a Legally Cognizable Separate Entity, Failure to make Deposits Payable to the Pool and Commingling of Pool Assets

46. Paragraphs 1 through 30 are re-alleged and incorporated herein.

47. Capital Funding violated Regulation 4.20, 17 C.F.R. § 4.20 (2009), by failing to operate the pool as an entity cognizable as a legal entity separate from that of the pool operator, by accepting funds from investors made payable to Capital Funding

instead of in the name of the Pool, and by commingling pool participant funds in the Capital Funding bank account with other funds.

48. Guidry, directly or indirectly, controlled Capital Funding and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Capital Funding's violations alleged in this count. Guidry is thereby liable for Capital Funding's violations of Regulation 4.20 pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

49. Each act of failing to operate the pool as an entity cognizable as a legal entity separate from that of the pool operator, of accepting funds from investors made payable to Capital Funding instead of in the name of the Pool, and of commingling pool participant funds during the relevant time, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.20, 17 C.F.R. § 4.20 (2009).

## VII. Relief Requested

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), and pursuant to its own equitable powers, enter:

A. An order finding each of the defendants liable for violating: Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii)(2006), with respect to acts occurring before June 18, 2008; Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), with respect to acts occurring on or after June 18, 2008; and Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006);

B. An order finding Capital Funding and Guidry liable for violating Regulation 4.20, 17 C.F.R. § 4.20 (2009);

C. Orders of preliminary and permanent injunction enjoining defendants and all persons insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with defendants who receive actual notice of such order by personal service or otherwise, from engaging, directly or indirectly, in:

1. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006);
2. Entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2009)) (“commodity options”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for their own personal account or for any account in which they have a direct or indirect interest;
3. Having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;
4. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, and/or forex contracts;
5. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;
6. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009);
7. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2009)), agent or any other officer or employee of any person registered, exempted from registration or required to be registered

with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009);

D. Orders of preliminary and permanent injunction prohibiting defendants, and any other person or entity associated with them, from, directly or indirectly,

1. Engaging in conduct in violation of Sections 4b(a)(1)(A) and (C) as amended by the CRA, to be codified at §§ 6b(a)(1)(A) and (C); and/or

2. Engaging in conduct in violation of Regulation 4.20, 17 C.F.R. 4.20 (2009);

E. A statutory restraining order pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2006), restraining defendants and all persons insofar as they are acting in the capacity of defendants' agents, servants, successors, employees, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. Destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of defendants, wherever located, including all such records concerning defendants' business operations;

2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of defendants, wherever located, including all such records concerning defendants' business operations; and

3. Withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial institution, bank or savings and loan account held by, under the control, or in the name of the defendants;

F. An order directing that defendants make an accounting to the Court of all of defendants' assets and liabilities, together with all funds they received from and paid to investors and other persons in connection with commodity futures transactions or purported commodity futures transactions, including the names, addresses and telephone numbers of any such persons from whom they received such funds to the date of such accounting, and all disbursements for any purpose whatsoever of funds received from commodity investors, including salaries, commissions, fees, loans and other disbursements of money and property of any kind, from March 1, 2004 to and including the date of such accounting. At a minimum, the accounting should include a chronological schedule of all cash receipts and cash disbursements. In addition, each transaction shall be classified as business or personal. All business transactions shall disclose the business purpose of the transaction. The accounting shall be provided in an electronic format such as Quicken, Excel, or other accounting or electronic format spreadsheet. In addition, the defendants shall supply true and accurate copies of any balance sheets, income statements, statement of cash flow, or statement of ownership equity previously prepared for the defendants' business(es);

G. An order requiring defendants immediately to identify and provide an accounting in the same manner as described above, for all assets and property that they currently maintain outside the United States, including, but not limited to, all funds on deposit in any financial institution, futures commission merchant, bank, or savings and loan accounts held by, under the control of, or in the name of William Charles Guidry, Matthew Brian Pizzolato, Capital Funding Consultants, L.L.C. or their nominees, whether held jointly or otherwise, and requiring them to repatriate all funds held in such

accounts by paying them to the Clerk of the Court, or as otherwise ordered by the Court, for further disposition in this case;

H. An order requiring the defendants and any third party transferee and/or successors thereof, to disgorge to any officer appointed or directed by the Court all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment and post-judgment interest;

I. An order directing the defendants and any successors thereof, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether implied or express, entered into between them and any of the pool participants whose funds were received by them as a result of the acts and practices that constituted violations of the Act and Regulations, as described herein;

J. An order requiring defendants to make restitution by making whole each and every pool participant whose funds were received or utilized by them in violation of the provisions of the Act as described herein, including pre-judgment interest;

K. An order requiring defendants to pay civil penalties under the Act, to be assessed by the Court, in amounts of not more than the higher of (1) triple the monetary gain to Defendant for each violation of the Act and Regulations or (2) \$130,000 for each violation of the Act before October 22, 2008, and \$140,000 for each violation of the Act on or after October 23, 2008;

L. An order requiring defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2006); and

M. An Order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated: November 20, 2009

Respectfully submitted,

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