

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. 09-7409

Judge Mary Ann Vial Lemmon

PROPOSED ORDER OF DEFAULT JUDGMENT
FOR PERMANENT INJUNCTION AND OTHER ANCILLARY RELIEF
AGAINST DEFENDANTS

On November 20, 2009, Plaintiff Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint against Capital Funding Consultants, L.L.C. (“Capital Funding”), William Charles Guidry (“Guidry”) and Matthew Brian Pizzolato (“Pizzolato”)(collectively “Defendants”) seeking injunctive and other equitable relief for violations of the Commodity Exchange Act (“the 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), to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Commission Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. §§ 1.1, *et seq.* (2010).

Defendants Pizzolato and Guidry were served pursuant to Fed. R. Civ. P. 4(e)(2), by personal service of the summons and Complaint on November 23 and 24, 2009, respectively, and Capital Funding was served pursuant to Fed. R. Civ. P. 4(h)(1)(B) by serving a copy of the summons and Complaint upon its Registered Agent on November 24, 2009. (Dkts. 11, 12 and 15)

Each of the Defendants has failed to plead or otherwise defend as to the Complaint within the time permitted by FED. R. CIV. P. 12(a)(1). On May 5, 2010, the Clerk entered a default against Capital Funding, Guidry and Pizzolato pursuant to FED. R. CIV. P. 55(a). (Dkt. 26)

The Commission now moves for entry of default judgments finding that Capital Funding, Guidry and Pizzolato are liable for each cause of action alleged in the Complaint and should be permanently enjoined from violating the Act. Further, the Plaintiff requests that the Court enter an order holding each of the Defendants jointly and severally liable for restitution of \$2,179,272.39, plus pre- and post-judgment interest thereon, disgorgement of \$221,815.53 against Guidry, plus pre- and post-judgment interest thereon, a civil monetary penalty of \$665,446.59, jointly and severally against Defendants Capital Funding and Guidry and a civil monetary penalty of \$2,210,000.00 against Defendant Pizzolato.

This Court has considered the CFTC’s Motion for Default Judgment and Proposed Order for Permanent Injunction and Other Ancillary Relief Against Defendants Capital Funding, Guidry and Pizzolato and the CFTC’s Memorandum of Law, the declarations and

exhibits filed by Plaintiff, and all other papers filed herein, and being fully advised in the premises,

I. FINDINGS OF FACT

THE COURT FINDS:

1. 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.

2. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1(e) (2006), in that Capital Funding, Guidry and Pizzolato transacted 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.

3. Service was properly made upon Capital Funding, Guidry and Pizzolato by personal service of a copy of the summons and Complaint to Pizzolato and Guidry on November 23 and 24, 2009, respectively, and upon the Registered Agent of Capital Funding on November 24, 2009.

4. Capital Funding, Guidry and Pizzolato have failed to timely answer or otherwise defend the CFTC's Complaint within the time permitted by FED. R. CIV. P. 12. Defendants Guidry and Pizzolato are not in the military service, nor are either of them an infant or incompetent.

5. Plaintiff's Motion was properly served on all the Defendants by sending a copy by certified mail on July , 2010.

6. The allegations of the CFTC's Complaint are well-pled and hereby taken as true. This Order is supported by the following facts:

Plaintiff

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.* (2010).

Defendants

8. 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. 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.

9. 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's 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.

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

11. On November 20, 2009, Pizzolato was indicted and arrested by federal authorities in connection with a related criminal proceeding. On April 1, 2010, in *U.S.A. v. Pizzolato*, No. 2:09-CR-378-LMA-ALC, Pizzolato entered a plea of guilty to 21 Counts of Mail Fraud, a count of Wire Fraud, three counts of Money Laundering, and single count of Securities Fraud and Witness Tampering.

The Defendants Cheated and Defrauded Pool Participants

12. Beginning in November 2004, Pizzolato and Capital Funding launched a scheme in which Pizzolato would solicit 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.

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

14. Pizzolato received approximately \$19.5 million from 180 customers, typically in the form of personal or third-party checks endorsed by the customers. Some of the third-

party checks from customers represented a liquidation of their legitimate annuity investments and/or retirement savings.

15. Pizzolato did not use customer funds in the manner that he had represented to prospective customers. Instead, he gave more than \$3 million from 30 customers to Guidry, pursuant to their agreement that Guidry would trade commodity futures and commodity options with some of those funds, an investment strategy that was not disclosed to customers.

16. Guidry knew that the funds he received from Pizzolato were from customers.

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

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

19. 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 from Capital Funding's bank account whose funds were derived primarily from participants.

20. Guidry made the trading decisions for the Capital Funding commodity trading accounts. The Capital Funding trading accounts at both MFG and RJO lost money trading

futures and options. The Defendants failed to disclose to most of the participants that Guidry was trading futures and options with their funds and that he was incurring trading losses.

21. Pizzolato made some payments of purported “profits” to participants so that they would be led to believe that their investment was profitable and to conceal the actual use of their investment funds.

22. Guidry 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 and therefore controlled Capital Funding.

23. Guidry, acting individually or as an agent for, and a controlling person of, Capital Funding, defrauded participants by misappropriating \$221,815.53 of participant funds for his personal expenses.

24. Defendants have not returned \$2,179,272.39 to the participants.

II. CONCLUSIONS OF LAW

25. From November 2004 through at least July 2008, in or in connection with contracts, made, or to be made, for or on behalf of other persons, Defendants Guidry and Capital Funding, cheated or defrauded, or attempted to cheat or defraud, customers or prospective customers, by, among other things, knowingly misappropriating participant funds, in 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)(2)(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).

26. From November 2004 through at least July 2008, in or in connection with contracts, made, or to be made, for or on behalf of other persons, Defendants Pizzolato and Capital Funding, cheated or defrauded, or attempted to cheat or defraud, customers or prospective customers, and willfully deceived or attempted to deceive customers or prospective customers by, among other things, knowingly making misrepresentations or failing 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, all in 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)(2)(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).

27. From November 2004 through at least July 2008, in or in connection with contracts, made, or to be made, for or on behalf of other persons, Defendant Capital Funding did not operate the pool as an entity cognizable as a legal entity separate from that of the pool operator, by accepting funds from customers made payable to Capital Funding instead of in the name of the Pool, and commingled pool participant funds in the Capital Funding bank account with other funds, and thereby violated Regulation 4.20, 17 C.F.R. § 4.20 (2010).

28. Capital Funding, Guidry and Pizzolato engaged in the acts and practices described above knowingly or with reckless disregard for the truth.

29. 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 fraudulent conduct. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Guidry is liable for Capital Funding's violations 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)(2)(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), Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006) and Regulation 4.20, 17 C.F.R. § 4.20 (2010).

30. The foregoing acts, misrepresentations and omissions of Guidry and Pizzolato occurred within the scope of their employment or office with Capital Funding; therefore, Capital Funding is liable for their acts and omissions 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 (2010) and therefore also 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 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)(2)(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) and Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2006).

Need for Permanent Injunction and Other Ancillary Equitable Relief

31. Plaintiff has made a showing that Defendants Capital Funding, Guidry and Pizzolato have "engaged, are engaging, or are about to engage in acts and practices in violation of the Act and Commission Regulations." Notwithstanding their default, the

totality of the circumstances establish that, unless permanently restrained and enjoined by this Court, there is a reasonable likelihood that Defendants will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act and Regulations.

32. Plaintiff has made a showing that Defendants Capital Funding, Guidry and Pizzolato should be held jointly and severally liable for the losses occasioned by their defrauded pool participants, which losses total \$2,179,272.39.

33. Plaintiff has made a showing that Defendant Guidry misappropriated a total of \$221,815.53 for his personal expenses and that he, thus, should be ordered to disgorge that amount.

34. Plaintiff has made a showing that a civil monetary penalty of \$665,446.59 should be assessed as a joint and several liability against Defendants Capital Funding and Guidry and a civil monetary penalty of \$2,210,000.00 should be assessed against Defendant Pizzolato.

III. ORDER OF PERMANENT INJUNCTION

A. Prohibition on Conduct in Violation of the Act

IT IS HEREBY ORDERED that Capital Funding, Guidry and Pizzolato, and their officers, agents, servants, employees, attorneys and all other persons who are in active concert with them are permanently restrained, enjoined and prohibited from directly or indirectly:

1. Cheating, defrauding or willfully deceiving, or attempting to cheat, defraud or willfully deceive, other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made or to be made for or on behalf of any other person, in violation of

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)(2)(A) and (C);

2. while acting as a CPO, employing a device, scheme or artifice to defraud pool participants or prospective pool participants, in violation of Section 4o(1)(A) of the Act;

3. while acting as a CPO, engaging in a transaction, practice or course of business that operates as a fraud or deceit upon any client or pool participant, or any prospective client or pool participant, in violation of Section 4o(1)(B) of the Act;

4. while registered or required to be registered as a CPO, (a) accepting from an existing or prospective pool participant pool funds other than in the name of the pool and/or (b) failing to treat the pool as a separate entity and/or (c) commingling the property of any pool that it operates or intends to operate with the property of any other person, in violation of Regulations 4.20(a) - (c).

B. Prohibition on Activities Related to Trading in any Commodity

IT IS FURTHER ORDERED THAT the Defendants are permanently enjoined

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) (2010)) (“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) (2010);

7. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2010)), 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) (2010);

C. Scope of Injunction

The injunctive and other provisions of this Order shall be binding on Defendants, upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of Defendants, and upon any person who receives actual notice of this Order by personal service or otherwise insofar as such person is acting in active concert or participation with Defendants.

IV.

**RESTITUTION, DISGORGEMENT, CIVIL MONETARY PENALTY AND
ANCILLARY RELIEF**

A. RESTITUTION

1. Capital Funding, Guidry and Pizzolato are jointly and severally liable for restitution in the amount of \$2,179,272.39, plus pre-judgment interest of \$73,543.19 for a prejudgment total of \$2,252,815.58 and post-judgment interest (“Restitution Obligation”). The Restitution Obligation shall commence immediately upon entry of this Order.

2. The Restitution Obligation shall not limit the ability of any customer from proving that a greater amount is owed, and nothing herein shall be construed in any way to limit or abridge the rights of any customers whose funds were deposited in the Capital Funding bank account ending with the numbers 1073 that exist under state or common law.

3. Pre-judgment interest was determined by a quarterly calculation using the underpayment rate established quarterly by the Internal Revenue Service pursuant to 26 U.S.C. § 6621(a)(2) from the date of filing of the Complaint to August 31, 2010.

4. Post-judgment interest on the Restitution Obligation shall accrue commencing on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

5. The Restitution Obligation shall be reduced by the amount of any payment made to satisfy the Disgorgement Obligation herein.

6. Pursuant to Fed. R. Civ. P. 71, pool participants are explicitly made intended third-party beneficiaries of this Order and may seek to enforce obedience of this Order to obtain satisfaction of any portion of the restitution which has not been paid by the Defendants.

B. DISGORGEMENT

1. Guidry shall be liable for disgorgement in the amount of \$221,815.53, plus pre-judgment interest in the amount of \$7,485.53 for a prejudgment total of \$229,301.06 and post-judgment interest (“Disgorgement Obligation”). The Disgorgement Obligation shall commence immediately upon entry of this Order. The Disgorgement Obligation represents

the amount of benefits that Guidry personally received as a result of the course of illegal conduct alleged in the Complaint.

2. The Disgorgement Obligation shall not limit the ability of any customer from proving that a greater amount is owed, and nothing herein shall be construed in any way to limit or abridge the rights of any customers of Guidry that exist under state or common law.

3. Pre-judgment interest was determined by a quarterly calculation using the underpayment rate established quarterly by the Internal Revenue Service pursuant to 26 U.S.C. § 6621(a)(2) from the date of filing of the Complaint to August 31, 2010.

4. Post-judgment interest on the Disgorgement Obligation shall accrue commencing on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

5. The Disgorgement Obligation shall be reduced by the amount of any payment made by Guidry to satisfy the Restitution Obligation herein.

C. ROLE OF THE MONITOR

1. Appointment of Monitor: To receive payment by Capital Funding, Guidry and Pizzolato and the distribution of restitution and disgorgement, the Court appoints the National Futures Association (“NFA”) as Monitor. The Monitor shall receive restitution payments from the Defendants and disgorgement payments from Guidry and make distributions as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, he shall not be liable for any action or inaction arising from his appointment as Monitor, other than actions involving fraud.

2. The Defendants shall make their required restitution payments and Guidry his required disgorgement payments under this Order in the name of “Capital Funding Fund” and shall send such restitution payments by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier’s, or bank money order to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under a cover letter that identifies the Defendant making the payment and the name and docket number of the proceeding. The Defendant making the payment shall simultaneously transmit copies of the cover letter and the form of payment to (a) Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and (b) Chief, Office of Cooperative Enforcement, at the same address.

3. The Monitor shall oversee the Defendants’ joint and several Restitution Obligation and Guidry’s Disgorgement Obligation, and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to participants or may defer distribution until such time as it may deem appropriate. In the event that the amount of restitution or disgorgement payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative costs of making a distribution to participants is impractical, the Monitor may, in its discretion, treat such restitution or disgorgement payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments as set forth in Section D. 3. below.

4. Defendants Capital Funding and Pizzolato shall execute any documents necessary to release funds by any repository, bank, investment or other financial institution wherever located, in order to make partial or total payment toward the Restitution Obligation.

5. To the extent that any funds accrue to the U.S. Treasury as a result of the Restitution Obligation or the Disgorgement Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in paragraph 3 of this Section.

D. CIVIL MONETARY PENALTIES

IT IS FURTHER ORDERED that:

1. Capital Funding and Guidry shall have joint and several liability to pay a civil monetary penalty in the amount of \$665,446.59, plus post judgment interest, and Pizzolato shall pay a civil monetary penalty in the amount of \$2,210,000.00, plus post judgment interest (collectively, the “CMP Obligation”).

2. Post-judgment interest on the Defendants’ respective CMP Obligations shall accrue beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

3. The Defendants shall pay their respective CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made by other than electronic funds transfer, the Defendants shall make the payment payable to the Commodity Futures Trading Commission and send to the following address:

Commodity Futures Trading Commission

Division of Enforcement
Attention: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 South MacArthur Boulevard
Oklahoma City, OK 73169
Telephone: 405-954-6569

4. If the payment is to be made by electronic funds transfer, the Defendants shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. The Defendants shall accompany the payment of the penalty with a cover letter that identifies the paying Defendant and the name and docket number of this proceeding. The Defendants shall simultaneously transmit copies of the cover letter and the form of payment to (a) Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and (b) the Chief, Office of Cooperative Enforcement, at the same address.

E. PRIORITY OF MONETARY PENALTIES AND PARTIAL PAYMENTS

1. All payments by Capital Funding and Pizzolato herein, pursuant to this Order, shall first be applied to satisfaction of their joint and several Restitution Obligation, consistent with the authority granted the Monitor above. All payments by Guidry shall first be applied to satisfaction of the Restitution Obligation and the Disgorgement Obligation, consistent with the authority granted the Monitor above. After satisfaction of the Restitution Obligation, payments by the Defendants shall be applied to satisfy their respective CMP Obligations.

2. Any acceptance by the Commission and/or Monitor of partial payment from any of the Defendants of their Restitution Obligation, Disgorgement Obligation and/or CMP Obligation shall not be deemed a waiver of the Defendants' obligation to make further payments pursuant to this Order, or a waiver of the Commission's and/or Monitor's right to seek to compel payment from the Defendants of any remaining balance.

F. MISCELLANEOUS PROVISIONS

IT IS FURTHER ORDERED THAT:

1. Prohibition on Transfer of Funds: The Defendants shall not transfer or cause others to transfer funds or other property to the custody, possession or control of any other person for the purpose of concealing such funds or property from the Court, the Plaintiff or any officer that may be appointed by the Court.
2. Partial Lifting of Freeze: Notwithstanding any order entered in this proceeding freezing Defendants' assets and/or prohibiting Defendants' transfer of funds or other property, such assets, funds, or property may be used to satisfy Defendant Capital Funding's and Guidry's joint and several Restitution Obligation and their respective CMP Obligations and shall be used to satisfy Defendant Pizzolato's joint and several Restitution Obligation and his CMP Obligation as set forth above.
3. Lifting of Freeze: Upon full satisfaction by the Defendants' of their Restitution Obligation and respective CMP Obligations as set forth above, any order entered in this proceeding freezing Defendants' assets and/or prohibiting Defendants' transfer of funds or other property shall be lifted.

4. Notices: All notices required to be given by any provision in this Order shall be sent by certified mail, return receipt requested, as follows:

Notice to Commission: Susan B. Padove
Commodity Futures Trading Commission
525 W. Monroe, Suite 1100
Chicago, Illinois 60661

All such notices to the Commission shall reference the name and docket number of this proceeding.

5. Invalidation: If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order, and the application of the provision to any other person or circumstance, shall not be affected by the holding.

6. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this case to assure compliance with this Order and for all other purposes related to this action.

CONCLUSION

For the reasons above, the CFTC's motion for entry of a default judgment and for a permanent injunction against Defendants Capital Funding, Guidry and Pizzolato is granted.

ENTERED 9/13/10



Mary Ann Vial Lemmon
United States District Judge