

**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.

~~Proposed~~ **STATUTORY RESTRAINING ORDER**

The Court having read the Complaint for Injunctive and Other Equitable Relief, the Plaintiff's Motion for a Statutory Restraining Order ("SRO"), the Brief in Support of Plaintiff's Motion for a SRO, the Declarations of Mary E. Spear, Len Riviere, Frank Panepinto, Joan Ackerman, Kathye Almon, Felix Polito, James S. Hodges and Millie Hebert, and the exhibits and attachments thereto, and all other papers filed herein by the Plaintiff, Commodity Futures Trading Commission ("CFTC"),

**THE COURT FINDS:**

1. The Court has jurisdiction over the subject matter.
2. Section 6c(a) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 13a-1(a), 7 U.S.C. § 13a-1 (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 (2008) permits this Court to enter an statutory restraining order ("SRO").
3. It appears to the satisfaction of the Court that there is good cause to believe that the Defendants, have engaged, are engaging in and are about to engage in violations of §§ 4(b)(a)(2)(i) and (iii), and the amendments thereto 4(b)(a)(2)(A) and (C) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), 6b(a)(2)(A) and (C) and 6o(1), and that Defendants Capital

Funding Consultants, L.L.C. and William Charles Guidry have engaged, are engaging in and are about to engage in violations of Commission Regulation 4.20, 17 C.F.R. § 4.20 (2009), thereunder. There is good cause to believe further that pool participants may be cheated and defrauded and that immediate and irreparable damage to the Court's ability to grant effective final relief for pool participants in the form of monetary redress will occur from the destruction of records unless the Defendants are immediately restrained and enjoined by Order of this Court and, accordingly, there is good cause to issue this Order.

4. It further appears to the satisfaction of the Court that this is a proper case for granting a statutory restraining order to preserve the status quo, protect public customers from loss and damage, and enable the CFTC to fulfill its statutory duties

### **ORDER**

#### **DEFINITIONS**

For the purposes of this Order, the following definitions apply:

5. "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including but not limited to chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes, accounts including bank accounts and accounts at financial institutions, brokerage firms or futures commissions merchants, credits, receivables, lines of credit, contracts including spot and futures contracts, insurance policies, and all cash, wherever located.

6. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.

7. "Defendants" mean Capital Funding Consultants, L.L.C., William Charles Guidry and Matthew Brian Pizzolato, and any person insofar as he or she is acting in the capacity as an officer, agent, servant, employee or attorney of any of the Defendants, individually or jointly, and any person who receives actual notice of this Order by personal service or otherwise, including Federal Express or other commercial overnight service, email or facsimile or pursuant

to Federal Rule of Civil Procedure 4 and Articles 2 through 10 of the Hague Convention, Service Abroad of Judicial and Extrajudicial Documents.

**RELIEF GRANTED**

**STATUTORY RESTRAINING ORDER**

**I. ASSET FREEZE**

**IT IS ORDERED** that Defendants and their agents, servants, employees, successors, assigns, attorneys and all persons insofar as they are acting in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including Federal Express or other commercial overnight service, email or facsimile or pursuant to Federal Rule of Civil Procedure 4 and Articles 2 through 10 of the Hague Convention, Service Abroad of Judicial and Extrajudicial Documents, from directly or indirectly dissipating, withdrawing, transferring, removing, concealing or disposing of any cash, cashier's checks, funds, assets or other property of, or within the custody, control or actual or constructive possession of Defendants, including, but not limited to, all funds, personal property, money or securities held in Defendants' name, all funds on deposit in any safety deposit box, financial institution, futures commission merchant, custodian, brokerage firm, bank or savings and loan account held by, under the actual or constructive control, or in the name of Defendants, all funds or property of Defendants' investors, wherever located, whether held in the name of the Defendants, individually or jointly, or any other entity owned or controlled by Defendants, or held on behalf of the Defendants, at anytime since November 1, 2004.

**IT IS FURTHER ORDERED** that, pending further Order of this Court, each bank, financial or brokerage firm, futures commission merchant, or business entity, or person that holds, controls, or maintains custody of any funds, assets or other property of Defendants, or has held, controlled, or maintained custody of any funds, assets or other property of Defendants, including, but not limited, to Iberia Bank, J. P. Morgan Chase Bank, Bank One, TradeStation, MF Global, Inc. and R.J. O'Brien, and who receives notice of this Order by any means, including facsimile or email or Federal Express or other commercial overnight service or pursuant to Federal Rule of Civil Procedure 4 and Articles 2 through 10 of the Hague Convention, Service Abroad of Judicial and Extrajudicial Documents, shall:

A. Prohibit Defendants and any other person from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise disposing of any such asset except as directed by further order of the Court;

B. Deny Defendants, and all other persons access to any safe deposit box that is:

1. titled in the name of Defendants, either individually or jointly; or
2. otherwise subject to access by the Defendants;

C. Provide counsel for the CFTC within five (5) business days of receiving a copy of this Order, a statement setting forth:

1. the identification number of each such account or asset titled in the name of Defendants, individually or jointly, or held on behalf of, or for the benefit, of the Defendants;
2. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and
3. the identification of any safe deposit box that is either titled in the name of Defendants, individually or jointly, or is otherwise subject to access by the Defendants;

D. Upon the request by the CFTC, promptly provide the CFTC with copies of all records or other documentation pertaining to such account or asset, including, but not limited to, originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, wire transfers to and from the accounts, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs; and

E. Cooperate with all reasonable requests of the CFTC relating to implementation of this Order, including producing records related to Defendants' accounts and Defendants' businesses.

**II. PROHIBITION OF DESTRUCTION OF BOOKS AND RECORDS**

**IT IS FURTHER ORDERED** that Defendants and their agents, servants, employees, successors, assigns, attorneys and all persons insofar as they are acting in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including facsimile, email or Federal Express or other commercial overnight service or pursuant to Federal Rule of Civil Procedure 4 and Articles 2 through 10 of the Hague Convention, Service Abroad of Judicial and Extrajudicial Documents, are restrained and enjoined from directly or indirectly destroying, mutilating, concealing, altering or disposing of, in any manner, any of the books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of Defendants wherever located, including all such records concerning the Defendants' business operations;

**III. ACCESS TO AND INSPECTION OF BOOKS AND RECORDS**

**IT IS FURTHER ORDERED** that Defendants must permit representatives of the Plaintiff CFTC to immediately inspect the books, records and other electronically stored data, tape recordings, and other documents of the Defendants and their agents, including all such records of Defendants' business operations, wherever they are situated and whether they are in the possession of the Defendants or others and to copy said documents, data, and records either on or off the premises where they may be situated and whether they are in the possession of the Defendants or others, and to copy said documents, data and records, either on or off the premises where they may be situated;

**IT IS FURTHER ORDERED** that Defendants and their agents, servants, employees, successors, assigns, attorneys and all persons insofar as they are acting in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including facsimile, email or Federal Express or other commercial overnight service or pursuant to Federal Rule of Civil Procedure 4 and Articles 2 through 10 of the Hague Convention, Service Abroad of Judicial and Extrajudicial Documents, from directly or indirectly refusing to make available for inspection by the CFTC, when as requested, any books, records, documents correspondence, brochures, manual, electronically stored data, tape records or other property of Defendants wherever located, including, but not limited to, all such records of Defendants' business operations.

**IV. SERVICE OF ORDER**

**IT IS FURTHER ORDERED** that copies of this Order may be served by any means, including facsimile transmission, email and Federal Express or other commercial overnight service or pursuant to Federal Rule of Civil Procedure 4 and Articles 2 through 10 of the Hague Convention, Service Abroad of Judicial and Extrajudicial Documents, upon any financial institution, FCM, bank, brokerage firm or other entity or person that may have possession, custody, or control of any documents or assets of the Defendants, or that may be subject to any provision of this Order. Mary E. Spear and John Wilson, employees of the CFTC, are hereby specially appointed to serve process, including this Order and all other papers in this cause. Additionally, Mary E. Spear and John Wilson are hereby granted leave, *instanter*, to effectuate service of process, including this Order and all other papers in this cause, pursuant to Federal Rule of Civil Procedure 4 and Articles 2 through 10 of the Hague Convention, Service Abroad of Judicial and Extrajudicial Documents.

**IT IS FURTHER ORDERED** that the Defendants shall serve all pleadings, correspondence or notices required by this Order, and other materials on the CFTC by delivering a copy to, Susan B. Padove, Senior Trial Attorney or Elizabeth M. Streit, Trial Team Leader, Division of Enforcement, Commodity Futures Trading Commission, 525 W. Monroe, Suite 1100, Chicago, Illinois 60661.

**VI. COURT MAINTAINS JURISDICTION**

**IT IS FURTHER ORDERED** that this Statutory Restraining Order shall remain in full force and effect until further Order of this Court, upon application, notice and an opportunity to be heard, and that this Court retains jurisdiction of this matter for all purposes.

**VII. FURTHER COURT HEARINGS**

A. **IT IS FURTHER ORDERED** that this matter is set for a status hearing on \_\_\_\_\_  
December 7, 2009 at 10:00 a.m..

B. **IT IS FURTHER ORDERED** that Plaintiff's Motion for a Preliminary Injunction is set for hearing on December 7, 2009 at 10:00 a.m.. Opposition briefs are due on November 25, 2009.

**IT IS SO ORDERED.**

Signed at 3:00 o'clock ~~am~~/pm on the 20th day of November, 2009

A handwritten signature in black ink, reading "Margaret Kil Lemmon", written over a horizontal line.

UNITED STATES DISTRICT JUDGE  
Eastern District of Louisiana