

**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**

**RECEIVED CFTC**



Office of Proceedings  
Proceedings Clerk

10:30 am, Jul 20, 2017

**In the Matter of:**

**ARTHUR TOOLE III,  
BILLIONAIRE INVESTOR  
GROUP LLC, THE TOOLE  
GROUP INC., and CATALYST  
TRADERS LLC**

**CFTC Docket No. 17-19**

**Respondents.**

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO  
SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, MAKING  
FINDINGS AND IMPOSING REMEDIAL SANCTIONS**

**I.**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from in or about February 2011 through at least January 2016 (the “Relevant Period”), Arthur Toole III (“Toole”), Billionaire Investor Group LLC (“BIG”), The Toole Group Inc. (“Toole Group”), and Catalyst Traders LLC (“Catalyst”) (collectively “Respondents”) violated Sections 4b(a)(1), 4o(1) and 4m(1) of the Commodity Exchange Act, as amended (the “Act”), 7 U.S.C. §§ 6b(a)(1), 6o(1) and 6m(1)(2012), and Commission Regulation (“Regulation”) 4.20(c), 17 C.F.R. § 4.20(c) (2016). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

**II.**

In anticipation of the institution of an administrative proceeding, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondents consent to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledge service of this Order.<sup>1</sup>

<sup>1</sup> Respondents consent to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondents do not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in

### III.

The Commission finds the following:

#### A. SUMMARY

During the Relevant Period, Toole operated three separate, commodity pools and solicited or accepted approximately \$375,144.90 from pool participants for the purpose of trading on-exchange commodity futures. Toole defrauded these pool participants by misappropriating over \$244,000 in customer funds and misrepresenting the pools' trading results to some of the pool participants. In addition, Toole acted as an unregistered Commodity Pool Operator ("CPO") and engaged in prohibited commingling of pool funds that he managed with his personal funds and other non-pool funds. Respondents BIG, Toole Group, and Catalyst are companies that Toole formed and in whose names Toole solicited pool participants. Because Toole was an officer and agent of these three entities and his violative acts were within the scope of his employment or office, these three companies are liable as Toole's principal for the violations Toole committed as their agent.

#### B. RESPONDENTS

**Arthur Toole III** is an Atlanta, Georgia resident and during the Relevant Period also resided in San Antonio, Texas. Toole has never been registered with the Commission in any capacity.

**Billionaire Investor Group LLC** was incorporated in February 2011 as a Texas limited liability company and its last known business address was in San Antonio, Texas. Toole is the Manager and sole owner of BIG. BIG has never been registered with the Commission in any capacity.

**The Toole Group Inc.** was incorporated in December 2011 in Texas and its last known business address was in San Antonio, Texas. Toole is the Director and Chief Executive Officer and sole owner of The Toole Group. Toole Group has never been registered with the Commission in any capacity.

**Catalyst Traders LLC** was incorporated in January 2014 as a Georgia limited liability company and its last known business address was in Lilburn, Georgia. Toole is the Managing Member and sole owner of Catalyst. Catalyst has never been registered with the Commission in any capacity.

#### C. FACTS

During the Relevant Period, Toole operated three commodity pools each of which had between 4-14 participants. During the Relevant Period, Toole primarily traded Chicago Mercantile Exchange ("CME") Euro FX futures and E-Mini Dow futures ("Dow futures") contracts on behalf of these three pools. Toole's trading was net unprofitable nearly every month he traded during the Relevant Period.

---

bankruptcy or to enforce the terms of this Order. Nor do Respondents consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

In or around February 2011, Toole formed BIG in San Antonio, Texas, and solicited or accepted approximately \$157,900 from 14 pool participants for the purpose of trading in Euro FX and Dow futures. Between January and August 2012, Toole used approximately \$55,712.76 of BIG pool funds to trade Euro FX and Dow futures but his trading was overall unprofitable nearly every month. Toole misappropriated approximately \$102,188 of BIG pool funds for personal and non-trading expenses. Toole also sent some of the BIG pool participants false account statements which failed to reflect the misappropriations and the pool's trading losses. Toole only returned approximately \$61,128.12 to the BIG pool participants.

In or around December 2012, Toole formed Toole Group in San Antonio, Texas, and eventually solicited or accepted approximately \$159,000 from 6 pool participants for the purpose of trading in Euro FX and Dow futures. Between January 2013 and March 2014, Toole used approximately \$55,400 of pool funds to trade Euro FX and Dow futures. Toole's trading was again net unprofitable nearly every month. Toole misappropriated approximately \$103,600 from this pool for personal and non-trading expenses, which included payments to BIG pool participants in the manner of a Ponzi scheme. Toole also sent some of Toole Group pool participants false account statements that failed to reflect his misappropriations and the pool's trading losses. Toole only returned approximately \$14,000 to the Toole Group pool participants.

In or around January 2014, Toole formed Catalyst in Lilburn, Georgia, and solicited or accepted approximately \$58,244.90 from four pool participants for the purpose of trading in Euro FX and Dow futures. Between March 2014 and January 2016, Toole used approximately \$20,000 to trade Euro FX and Dow futures contracts on behalf of this pool and his trading was again net unprofitable nearly every month. Toole misappropriated approximately \$38,244.90 from the Catalyst pool participants for personal and non-trading expenses. Toole also sent some of the Catalyst pool participants false account statements which showed profits instead of the actual losses for the pool and failed to disclose the misappropriated amounts. In January 2016, Toole emailed the Catalyst pool participants about large trading losses that wiped out the trading account but inflated the assets and losses of Catalyst in order to garner sympathy and deflect customer redemption requests. Toole never disclosed to the Catalyst pool participants that he had misappropriated more than half of the pool's assets. Toole only returned approximately \$6,875 to the pool participants.

In aggregate, during the Relevant Period Toole solicited or accepted approximately \$375,144.90 for all three pools and misappropriated approximately \$244,032.90 of pool funds. Pool participants' total net losses, the difference between the amount participants invested and the amount returned to them by Respondents, is approximately \$293,141.78.

In addition, during the Relevant Period, Toole commingled the assets of all three pools with non-pool property, such as his own funds, funds from personal loans, and income from other businesses.

Toole was the sole principal and officer of BIG, Toole Group, and Catalyst and his actions described herein were within the scope of his employment or office.

## IV.

### LEGAL DISCUSSION

#### A. Respondent Toole Defrauded Others in Connection with Commodity Futures Transactions

During the Relevant Period, in connection with commodity futures transactions made or to be made or subject to the rules of a designated contract market, for or on behalf of others who provided funds to the Respondents for the purpose of trading commodity futures, Toole cheated, defrauded, or attempted to cheat or defraud such persons in regard to orders or contracts or the disposition or execution of orders or contracts, or in regards to any act of agency performed by Toole with respect to such orders or contracts, with such pool participants, in violation of Sections 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C) (2012). To establish liability for fraud, the Commission must prove: “(1) the making of a misrepresentation, misleading statement, or a deceptive omission; (2) scienter; and (3) materiality.” *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1328 (11th Cir.2002). Scienter is met when respondent’s conduct involves “highly unreasonable omissions or misrepresentations ... that present a danger of misleading [customers] which is either known to the [respondent] or so obvious that [respondent] must have been aware of it.” *Id.* “A representation or omission is ‘material’ if a reasonable investor would consider it important in deciding whether to make an investment.” *Id.* at 1328-29. Misappropriation of customers’ monies also violates Section 4b of the Act. *See In re Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701, (CFTC July 19, 1999) (respondents violated Section 4b of the Act by surreptitiously retaining money in their own bank accounts that should have been traded on behalf of the investors), *aff’d in relevant part sub nom. Slusser v. CFTC*, 210 F.3d 783 (7th Cir. 2000); *CFTC v. Morse*, 762 F.2d 60, 62 (8th Cir. 1985) (recognizing that defendant’s use of customer funds for personal use violated Section 4b of the Act).

During the Relevant Period, Respondent Toole violated Section 4b(a)(1) of the Act, 7 U.S.C. § 6b(a)(1), by misappropriating funds from others for personal and non-trading related expenses. For example, Respondent Toole used pool funds to pay for personal meals, entertainment, consumer goods and Ponzi payments to earlier pool participants. During the Relevant Period, Toole misappropriated over 50% of the total funds that were raised for the three commodity pools. Moreover, Toole knowingly or recklessly made material misrepresentations by emailing certain investors fraudulent statements that misrepresented trading results and pool assets and failed to disclose his misappropriations.

#### B. Respondent Toole Acted as a CPO and Defrauded Pool Participants

During the Relevant Period, Toole acted as a CPO by soliciting, accepting, or receiving funds from participants in a pooled investment trust, syndicate or similar form of enterprise and for the purpose of trading in commodity interests, including Euro FX and Dow futures. 17 C.F.R. § 1a(11). Sections 4o(1)(A)-(B) of the Act, 7 U.S.C. §§ 6o(1)(A)-(B) (2012), makes it unlawful for a CPO, by use of the mails or instrumentality of interstate commerce, directly or indirectly, to employ any device, scheme, or artifice to defraud any pool participant or prospective pool participant, or to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any pool participant or prospective pool participant. The same conduct that

constitute violations of Section 4b(a)(1) of the Act, as described above, also constitute violations of Section 4o(1) of the Act. *See, e.g., CFTC v Skorupskas*, 605 F.Supp. 923, 932-33 (E.D. Mich. 1985). However, proof of scienter is not required under Section 4o(1)(B) of the Act. *In re Kolter*, Comm. Fut. L. Rep. ¶ 26,262, 1994 WL 621595 at \*7 (CFTC Nov. 8, 1994). While using the instrumentalities of interstate commerce, namely e-mails and electronic bank transactions, Toole, acting as a CPO, knowingly or recklessly sent false statements to pool participants and misappropriated pool funds and thus violated Section 4o(1) of the Act.

**C. Respondent Toole Acted as an Unregistered CPO**

During the Relevant Period, Toole acted as an unregistered CPO in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1), by engaging in a business that is in the nature of an investment trust, syndicate or similar form of enterprise, and in connection therewith, solicited, accepted, or received funds, securities, or property for the purpose of trading in commodity interests without registering as a CPO. Moreover, Toole did not satisfy the requirements for any exemption from such registration and therefore acted as an unregistered CPO in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

**D. Respondent Toole Commingled Pool Funds**

Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2016), prohibits CPOs, whether registered or not, from commingling the property of any pool that it operates or intends to operate with the property of any other person. On numerous occasions during the Relevant Period, Respondent Toole commingled pool property with his own property by (a) transferring funds to and from the pools' bank accounts to Toole's bank accounts, (b) depositing funds from personal loans into the pools' bank accounts, and (c) depositing income from Toole's other business into the pools' bank accounts. Because Toole commingled pool property with his own property, he violated Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2016).

**E. Respondents BIG, Toole Group and Catalyst are Liable for Toole's Violations**

During the Relevant Period, Toole was the sole principal and owner of BIG, Toole Group and Catalyst and committed the acts found in this Order within the scope of his office or employment. Thus, Respondents BIG, Toole Group and Catalyst are liable for Toole's violations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

**V.**

**FINDINGS OF VIOLATION**

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondents Toole, BIG, Toole Group, and Catalyst violated Sections 4b(a)(1)(A)-(C), 4o(1)(A)-(B), and 4m(1) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6o(1)(A)-(B), and 6m(1), and Regulation 4.20(c), 17 C.F.R. § 4.20(c).

## VI.

### OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings and conclusions herein:

- A. Acknowledge receipt of service of this Order;
- B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waive:
  - 1. The filing and service of a complaint and notice of hearing;
  - 2. A hearing;
  - 3. All post-hearing procedures;
  - 4. Judicial review by any court;
  - 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
  - 6. Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of Regulations, 17 C.F.R. §§ 148.1-30 (2016), relating to, or arising from, this proceeding;
  - 7. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and
  - 8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer;
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
  - 1. Makes findings by the Commission that Respondents violated Sections 4b(a)(1)(A)-(C), 4o(1)(A)-(B), and 4m(1) of the Act and Regulation 4.20(c);

2. Orders Respondents to cease and desist from violating Sections 4b(a)(1)(A)-(C), 4o(1)(A)-(B), and 4m(1) of the Act and Regulation 4.20(c);
3. Orders Respondents to pay, jointly and severally, restitution in the amount of two hundred ninety-three thousand, one hundred forty-one dollars (\$293,141), plus post-judgment interest within thirty (30) days of the date of entry of this Order;
4. Orders Respondents to pay, jointly and severally, a civil monetary penalty in the amount of two hundred thousand dollars (\$200,000), plus post-judgment interest within thirty (30) days of the date of entry of this Order;
5. Appoints the National Futures Association (“NFA”) as Monitor in this matter;
6. Orders that Respondents be permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012)), and all registered entities shall refuse them trading privileges; and
7. Orders Respondents, and their successors and assigns, to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.

## VII.

### ORDER

**Accordingly, IT IS HEREBY ORDERED THAT:**

- A. Respondents shall cease and desist from violating Sections 4b(a)(1)(A)-(C), 4o(1)(A)-(B), and 4m(1) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6o(1)(A)-(B) and 6m(1) (2012), and Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2016);
- B. Respondents shall pay, jointly and severally, restitution in the amount of two hundred ninety-three thousand one hundred forty-one dollars (\$293,141) (the “Restitution Obligation”), plus post-judgment interest, within thirty (30) days of the date of the entry of the Order. If the Restitution Obligation is not paid in full within thirty (30) days of the date of entry of the Order, then post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of the Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of the Order pursuant to 28 U.S.C. § 1961 (2012).

To effect payment by Respondents and the distribution of restitution to Respondents’ customers, the Commission appoints the NFA as “Monitor.” The Monitor shall collect payments of the Restitution Obligation from Respondents 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, it shall not be liable for any action or inaction arising from its appointment as Monitor other than actions involving fraud.

Respondents shall make their payments of the Restitution Obligation under the Order in the name of the "Arthur Toole Settlement Fund" and shall send such payments by electronic funds transfer, or U.S. postal money order, certified check, bank cashier's check, 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 paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

The Monitor shall oversee Respondents' Restitution Obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to the Respondents' customers or may defer distribution until such time as the Monitor may deem appropriate. In the event that the amount of payments of the Restitution Obligation to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a restitution distribution is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission, as discussed below. To the extent any funds accrue to the U.S. Treasury for satisfaction of Respondents' Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in the Order;

- C. Respondents shall pay, jointly and severally, a civil monetary penalty in the amount of two hundred thousand dollars (\$200,000) ("CMP Obligation"), plus post-judgment interest, within thirty (30) days of the date of the entry of the Order. If the CMP Obligation is not paid in full within thirty (30) days of the date of entry of the Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of the Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of the Order pursuant to 28 U.S.C. § 1961 (2012).

Respondents shall pay the 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 other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Accounts Receivables  
DOT/FAA/MMAC/AMZ-341  
CFTC/CPSC/SEC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
(405) 954-7262 office  
(405) 954-1620 fax  
nikki.gibson@faa.gov



If payment is to be made by electronic funds transfer, Respondents shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581;

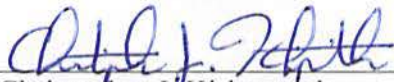
- D. Respondents are permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012)), and all registered entities shall refuse them trading privileges; and
- E. Respondents, and their successors and assigns, shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** Respondents agree that neither they nor any of their successors and assigns, agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents, and their successors and assigns, shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.
  2. Respondents agree that they shall never, directly or indirectly:
    - a. enter into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2016)) for Respondents' own personal accounts or for any accounts in which Respondents have a direct or indirect interest;
    - b. have any commodity interests traded on Respondents' behalf;
    - c. control or direct the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
    - d. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;
    - e. apply for registration or claim exemption from registration with the Commission in any capacity, and engage 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) (2016); and/or

- f. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2016)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012) registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2016).
3. Cooperation with Monitor: Respondents shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Respondents' customers, whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any restitution payments. Respondents shall execute any documents necessary to release funds that they have in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.
4. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission or the Monitor of any partial payment of Respondents' Restitution Obligation or CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to the Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
5. Change of Address/Phone: Until such time as Respondents satisfy in full their Restitution Obligation and CMP Obligation as set forth in Commission's Order, Respondents shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten (10) calendar days of the change.

**The provisions of this Order shall be effective as of this date.**

By the Commission.



Christopher J. Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: July 20, 2017