

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

DOMINICK VINCENT CARDUCCI and  
VOS CAPITAL MANAGEMENT, LLC,

Defendants.

Case No.: \_\_\_\_\_

ECF CASE

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

Plaintiff Commodity Futures Trading Commission (“CFTC” or “Commission”), by and through its attorneys, alleges as follows:

**I. SUMMARY**

1. From at least August 2016 through in or about September 2018 (the “Relevant Period”), Dominick Vincent Carducci, a/k/a Dominick V. Carducci (“Carducci”), individually and as agent and principal of VOS Capital Management, LLC (“VOS Capital”) (collectively “Defendants”), operated a fraudulent scheme in which they solicited, accepted and misappropriated funds for a pooled investment vehicle in off-exchange leveraged or margined foreign currency exchange (“forex”) contracts.

2. Carducci, as an officer and agent of VOS Capital, knowingly made fraudulent and material misrepresentations and omissions, in both conversations and written communications, about his forex trading and returns to persuade at least thirty individuals (“Pool Participants”) to transfer at least \$1.1 million to Defendants for the purpose of participating in a pooled forex investment vehicle.

3. To entice prospective Pool Participants, Defendants knowingly and falsely represented, among other things, that Defendants had made large profits for themselves and Pool Participants from trading forex; that Defendants maintained a forex trading account with a registered foreign exchange dealer that had \$12 million under Defendants' management; that Defendants would trade forex on behalf of Pool Participants; that Pool Participants would realize profits of up to 18% per month on their investments without losses; and that upon request Pool Participants could withdraw the funds they had invested.

4. Defendants failed to trade Pool Participants' funds as promised and, instead, misappropriated most of their money. Upon Defendants' direction, Pool Participants deposited their funds into Defendant VOS Capital's bank account. Thereafter, Defendants used the majority of those funds to pay Carducci's personal expenses, and to support Carducci's lavish lifestyle by, among other things, acquiring luxury automobiles and paying for international travel. The remainder of the funds was paid to some Pool Participants, in the manner of a Ponzi scheme.

5. By virtue of this conduct and the conduct further described herein, Defendants have engaged, are engaging, or are about to engage in acts and practices in violation of Sections 4b(a)(2)(A)-(C) and 4o(1)(A)-(B) of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 6b(a)(2)(A)-(C), 6o(1)(A)-(B) (2012), and Commission Regulation ("Regulation") 5.2(b)(1)-(3) (2018), 17 C.F.R. §5.2(b)(1)-(3) (2018), which prohibit fraud in connection with forex transactions and fraud by a commodity pool operator ("CPO").

6. In addition to the above-described fraudulent conduct, Defendant VOS Capital acted at all times during the Relevant Period as a CPO by operating or soliciting funds for a pooled investment vehicle that is not an eligible contract participant ("ECP") and that engages in

retail forex transactions, without being registered with the Commission as a CPO, as required by the Act and Regulations. Specifically, Defendant VOS Capital's failure to register as a CPO violated Sections 2(c)(2)(C)(iii)(I)(cc) and 4m(1) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6m(1) (2012), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2018).

7. Similarly, Defendant Carducci solicited funds for participation in a pooled investment vehicle for the purpose of trading in off-exchange leveraged or margined forex contracts, while associated with Defendant VOS Capital as an officer, employee, or agent, without being registered with the Commission as an associated person ("AP") of VOS Capital, as required by the Act and Regulations. Specifically, Defendant Carducci's failure to register as an AP of a CPO violated Sections 2(c)(2)(C)(iii)(I)(cc) and 4k(2) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6k(2) (2012), and 17 C.F.R. § 5.3(a)(2)(ii).

8. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act and the Regulations promulgated thereunder. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including, but not limited to, trading and registration bans, restitution, disgorgement, rescission, pre- and post-judgment interest, and such other and further relief as the Court may deem necessary or appropriate.

9. Unless restrained and enjoined by this Court, Defendants will likely continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as described below.

## II. JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331 (2012) (codifying federal question jurisdiction) and 28 U.S.C. §1345 (2012) (providing that U.S. district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). In addition, Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), provides that the U.S. district courts have jurisdiction to hear actions brought by the Commission for injunctive relief or to enforce compliance with the Act whenever it shall appear to the Commission that a 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.

11. The CFTC has jurisdiction over the forex solicitations and transactions at issue in this case pursuant to Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C)(2012).

12. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because Defendants transact or transacted business in this District, and certain transactions, acts, practices, and courses of business alleged in this Complaint occurred, are occurring, or are about to occur in this District. Specifically, several of the defrauded Pool Participants reside in and were solicited in this District, and Defendants represented to Pool Participants that their funds would be maintained in a trading account at a registered foreign exchange dealer located in New York, N.Y.

## III. THE PARTIES

13. Plaintiff **Commodity Futures Trading Commission** (“CFTC” or “Commission”) is an independent federal regulatory agency charged by Congress with the responsibility of administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1-27f (2012),

and the Commission's Regulations promulgated thereunder, 17 C.F.R. pts. 1-190 (2018). The Commission maintains its principal office at 1155 21<sup>st</sup> Street N.W., Washington, DC 20581.

14. Defendant **Dominick Vincent Carducci** is a resident of Clemson, South Carolina. Carducci is the President and sole owner of Defendant VOS Capital. Carducci has never been registered with the Commission in any capacity.

15. Defendant **VOS Capital Management, LLC** ("VOS Capital") was incorporated in South Carolina on August 15, 2016. During the Relevant Period, VOS Capital's address was the same as Carducci's residence. VOS Capital has never been registered with the Commission in any capacity.

#### **IV. STATUTORY AND REGULATORY BACKGROUND**

16. Section 2(c)(2)(C) of the Act, 7 U.S.C. § 2(c)(2)(C) (2012), applies provisions of the Act to agreements, contracts, or transactions in forex. Specifically, 7 U.S.C. § 2(c)(2)(C)(iv) states that Section 4b of the Act, 7 U.S.C. § 6b (2012), applies to forex agreements, contracts, or transactions "as if" they were contracts of sale of a commodity for future delivery.

17. 7 U.S.C. § 2(c)(2)(C)(iii)(I)(cc) prohibits any person from operating or soliciting funds, securities, or property for any pooled investment vehicle that is not an ECP in connection with agreements, contracts, or transactions in forex, unless registered with the Commission, with certain exceptions not applicable to Defendants.

18. Section 1a(18)(iv) and (xi) of the Act, 7 U.S.C. § 1a(18)(iv), (xi) (2012), defines an ECP, in relevant parts, as:

[A] commodity pool that—(I) has total assets exceeding \$5,000,000; and (II) is formed or operated by a person subject to regulation under the Act, provided that for purposes of Section 2(c)(2)(C)(vii) of the Act, the term ECP shall not include a commodity pool in which any participant is not otherwise an eligible contract participant, *see* 7 U.S.C. § 1a(18)(iv) (2012); or

[A]n individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of—(I) \$10,000,000; or (II) \$5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual.

19. Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2018), require any person acting as a CPO, as defined in Regulation 5.1(d)(1), 17 C.F.R. § 5.1(d)(1) (2018), to be registered as such with the Commission.

20. For the purposes of trading forex, a CPO is defined in 17 C.F.R. § 5.1(d)(1) as “any person who operates or solicits funds, securities, or property for a pooled investment vehicle that is not an [ECP] as defined in section 1a(18) of the Act, and that engages in retail forex transactions[.]”

21. Section 4k of the Act, 7 U.S.C. § 6k(2) (2012), and 17 C.F.R. § 5.3(a)(2)(ii) require any AP of a CPO, as defined in 17 C.F.R. § 5.1(d)(2), to be registered as such with the Commission.

22. For the purposes of trading forex, an AP of a CPO is defined in 17 C.F.R. § 5.1(d)(2) as “any natural person associated with a commodity pool operator . . . as a partner, officer, employee, consultant or agent . . . in any capacity which involves: (i) The solicitation of funds, securities, or property for a participation in a pooled investment vehicle; or (ii) The supervision of any person or persons so engaged.”

## V. FACTS

### A. Defendants’ Fraudulent Solicitation and False Statements

23. During the Relevant Period, Defendants fraudulently solicited at least \$1.1 million from at least thirty non-ECP Pool Participants, who were Defendant Carducci’s friends, family

members, acquaintances, and members of the public, for the purpose of trading off-exchange leveraged or margined forex contracts on behalf of the Pool Participants.

24. Throughout the Relevant Period, Defendants falsely and fraudulently represented to Pool Participants that Defendants used Pool Participants' funds profitably to trade forex, that Pool Participants would realize large monthly profits on their investments without losses, and that upon request Pool Participants could withdraw their funds.

25. In fact, Defendants did not conduct forex trading on behalf of Pool Participants, but instead intentionally misappropriated Participants' funds for Defendants' own benefit and personal use.

26. On August 15, 2016, Defendant VOS Capital was incorporated in South Carolina. Carducci held himself out as the President and sole owner of VOS Capital, and VOS Capital's address was the same as Carducci's residence.

27. On or about August 25, 2016, Carducci opened a business checking account for VOS Capital at Wells Fargo Bank (the "Wells Fargo Account"). On the application to open the account, Carducci listed himself as the "sole owner" of VOS Capital and the "owner with control of the entity."

28. Defendants solicited prospective Pool Participants through in-person meetings, telephone calls, e-mails, text messages and word of mouth, seeking out individuals who would agree to let Carducci trade forex on their behalf through his company, VOS Capital.

29. In soliciting prospective Pool Participants, Carducci, as an officer and agent of VOS Capital, made the following misrepresentations, among others:

- a. that Carducci was a highly successful forex trader;

- b. that by virtue of his trading success Carducci was able to make frequent international trips and to acquire luxury automobiles and expensive clothing;
- c. at least one Pool Participant was told that Carducci has made \$11 million from forex trading;
- d. Pool Participants were told that they would receive profits of 8% to 18% per month, and some were told that they were guaranteed not to lose money;
- e. that VOS Capital had a forex trading account at a registered retail foreign exchange dealer located in New York, NY (Forex Dealer 1) and that Pool Participants' funds would be traded in that account; and
- f. Defendants told at least one Pool Participant that VOS Capital had \$12 million in client funds under management in the account at Forex Dealer 1.

30. At the direction of the Defendants, several Pool Participants entered into a written "Client Agreement" with VOS Capital. Carducci provided the Client Agreement to Pool Participants by e-mail or through other means or instrumentalities of interstate commerce. The agreement contained multiple false statements, including:

- a. VOS Capital "shall provide investment management to Client";
- b. that invested funds would be held in a "managed investment portfolio";
- c. that VOS Capital would receive no compensation until "the full initial investment is doubled";
- d. "[i]n the case of a loss [of] principle [sic] investment is to remain safe"; and
- e. "[w]ithdrawals will be completed within seven to ten business days."

31. To conceal from Pool Participants that their funds had been misappropriated, Carducci told some Pool Participants, both orally and in written purported account statements,



after they invested, that their investments were making money, and at least one Pool Participant was told that his investment had doubled in value. In a telephone conversation Carducci falsely stated to one Pool Participant, several months after he invested, that his investment had made a profit of \$100,000. These statements were false.

32. Further to conceal from Pool Participants that their funds had been misappropriated, Defendants also sent false account statements to some of the Pool Participants after they invested, claiming that their investments were making money from forex trading, when in fact Defendants never traded forex on behalf of Pool Participants.

33. For example, one Pool Participant, who invested \$192,000 with Defendants, received from Carducci, periodically from in or about December 2017 until in or about August 2018, a document entitled “Investment Account Summary” falsely indicating that the amount of this Participant’s investment was purportedly steadily increasing in value. One such Summary indicated that this Participant’s funds had been placed in the “medium risk pool . . . mainly comprised of the Eur/Usd [Euro/U.S. Dollar] pair” of currencies. The Summary further stated that the value of this Participant’s investment had purportedly increased from \$192,000 to more than \$340,000.

34. Another Pool Participant, who had invested \$20,000 with Defendants in or about April 2018, received via e-mail from Carducci in or about June and July 2018, two “Investment Account Summary” documents, falsely indicating that this Participant’s funds were invested in both a low risk and a high risk pool, listing various forex products in which these pools were supposedly invested, and indicating that the value of this Participant’s investment had purportedly increased to over \$25,000.

35. Defendants failed to trade forex on behalf of Pool Participants, as they represented they would do. Although Defendants represented to Pool Participants that Defendants had a trading account at Forex Dealer 1 and that Participants' funds would be traded in off-exchange forex in a trading account at Forex Dealer 1, Defendants never had an active trading account at Forex Dealer 1 during the Relevant Period.

36. For a short time during the Relevant Period, from on or about August 17, 2016 to on or about February 7, 2017, VOS Capital maintained a trading account at a registered futures commission merchant (FCM 1). The account was opened with a deposit of \$5,000, incurred losses as a result of trades in crude oil futures contracts, and was closed with a balance of approximately \$3,432, which balance was transferred to VOS Capital's Well Fargo Account. No forex trading occurred in this account at FCM 1.

37. Upon information and belief, Carducci did not have any trading accounts in his name during the Relevant Period.

38. Defendants made the misrepresentations and omissions alleged herein willfully or with reckless disregard for the truth and by use of the mails or other means or instrumentalities of interstate commerce.

**B. Defendants Misappropriated Pool Participants' Funds**

39. Defendants instructed Pool Participants either to wire their funds to the Wells Fargo Account (a business checking account in the name of VOS Capital) or, if they wished to invest by check or cash, to send the funds to VOS Capital's business address (which was also Carducci's residence address in Clemson, S.C.).

40. Most, if not all, funds invested with Defendants by Pool Participants during the Relevant Period were deposited into the Wells Fargo Account (either by wire transfers sent

directly from Pool Participants, or by Defendants depositing checks or cash received from Pool Participants).

41. Carducci was the sole signatory on the Wells Fargo Account during the Relevant Period.

42. Account statements for the Wells Fargo Account show that during the Relevant Period, rather than using Pool Participants' funds for trading forex as Defendants had represented they would, Defendants instead used that account for Carducci's personal benefit. Specifically, Defendants made payments from the Wells Fargo Account totaling at least approximately \$700,000 to and for, among other things, Carducci's student loan; dozens of restaurants; bars and nightclubs; numerous luxury hotels, including in Italy, London, Monaco, and The Netherlands; gas stations; supermarkets; numerous high-end stores including Neiman Marcus, Tiffany's, Louis Vuitton, and Burberry's; sporting goods stores, fitness clubs, and golf courses; pet stores; numerous airlines; Amtrak; Uber; movies, videos, and to the Apple iTunes Store; luxury car dealers including Porsche and for exotic car rentals; and residential lease payments. In addition, during the Relevant Period Defendants made frequent ATM and other cash withdrawals from the Wells Fargo Account, and made numerous transfers to Carducci, or for his benefit, totaling at least approximately \$250,000.

43. A specific example of Defendants' misappropriation occurred with Pool Participant 1. When Carducci learned that Pool Participant 1 was responsible for investing his father's retirement funds, Carducci called Pool Participant 1 on a daily basis until Pool Participant 1 agreed to invest with Defendants. In these calls, Carducci made various misrepresentations to Pool Participant 1 including, among other things, telling Pool Participant 1 that Carducci was managing \$12 million in client funds and earning large profits trading forex

for clients; that if Pool Participant 1 invested he would earn profits from forex trading of between 8% to 16% per month; and that Pool Participant 1 was guaranteed not to lose money. Carducci also provided Pool Participant 1 with the VOS Capital Client Agreement, which contained multiple false statements, including that withdrawals would be completed within seven to ten business days. On or about December 11, 2017, Pool Participant 1 invested with the Defendants by wiring \$192,000 from his father's retirement funds to the VOS Capital Wells Fargo Account, in accordance with wire transfer instructions that Pool Participant 1 received from Carducci. Thereafter, Carducci sent Pool Participant 1 multiple false purported Account Summaries, claiming that Pool Participant 1 had earned large profits and, according to one of the Account Summaries, his investment had increased to a value of over \$340,000. On or about June 1, 2018, Pool Participant 1 requested of Carducci a withdrawal of \$276,000, the then purported value of Pool Participant 1's investment. Defendants did not comply with that withdrawal request. On or about August 4, 2018, when Pool Participant 1 received an account statement from Carducci claiming that Pool Participant 1's investment had increased in value to over \$340,000, Pool Participant 1 requested to Carducci that Pool Participant 1's investment be closed and that all his funds and purported profits be returned. In a series of conversations over several months with Pool Participant 1, Carducci offered multiple excuses as to why funds could not be returned to Pool Participant 1, including claiming that Pool Participant 1's funds had been sent to an off-shore account. After Pool Participant 1 made repeated requests to Carducci over several months that his funds be returned, Defendants eventually returned only approximately \$22,000 to Pool Participant 1.

44. To date, despite repeated requests to Carducci for the return of their funds, most Pool Participants have not received their funds back from the Defendants.

45. To the extent some Pool Participants have received funds back from Defendants, those funds were misappropriated by Defendants from other Pool Participants, in the nature of a Ponzi scheme.

46. The Wells Fargo Account was closed in or about September 2018.

47. Defendants misappropriated Pool Participants' funds by use of the mails or other means or instrumentalities of interstate commerce.

**C. VOS Capital Acted as an Unregistered CPO, and Carducci Acted as an Unregistered AP of a CPO**

48. During the Relevant Period, Defendant VOS Capital, through Defendant Carducci, acted by operating or soliciting funds for a pooled investment vehicle that is not an ECP and that engages in retail forex transactions.

49. During the Relevant Period, Carducci acted in a capacity requiring registration as an AP of a CPO by soliciting customers and prospective customers for participation in a pooled investment vehicle, while associated with VOS Capital as a partner, officer, employee, or similar agent.

50. During the Relevant Period, VOS Capital was not registered with the Commission as a CPO, and Carducci was not registered with the Commission as an AP of a CPO as required by the Act and Regulations.

**D. Carducci Was a Controlling Person of VOS Capital**

51. Defendant Carducci was a controlling person of VOS Capital. Carducci was the founder, President and sole owner of VOS Capital. Carducci told Participants that he was responsible for the trading at VOS Capital and was generally the sole source of information for Pool Participants regarding VOS Capital and their investments. Carducci controlled the VOS

Capital Wells Fargo Account, into which Pool Participants transferred funds for the purpose of trading forex.

**E. Carducci Acted as an Agent for VOS Capital**

52. Through his solicitation of prospective and existing Pool Participants and his continued communication with Pool Participants regarding their purported trading success on behalf of VOS Capital, Carducci acted as an agent of VOS Capital.

**V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS**

**COUNT ONE—AGAINST ALL DEFENDANTS**

**Violations of Section 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(2)(A)-(C) (2012), and Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b)(1)-(3) (2018) (Fraud In Connection with Forex Transactions by Fraudulent Solicitation and Misappropriation)**

53. Paragraphs 1 through 52 are re-alleged and incorporated herein by reference.

54. 7 U.S.C. § 6b(a)(2)(A)-(C) makes it unlawful “for any person, in or in connection with any order to make, or the making of, any contract for sale of any commodity for future delivery . . . that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market—(A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; or (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to an order or contract for or, in the case of paragraph (2), with the other person.”

55. Section 2(c)(2)(C)(iv) of the Act, 7 U.S.C. § 2(c)(2)(C)(iv) (2012), provides that 7 U.S.C. § 6b(a)(2)(A)-(C) of the Act also applies to the forex transactions, agreements, or contracts offered by Defendants “as if” they were a contract of sale of a commodity for future delivery.

56. 17 C.F.R. § 5.2(b) makes it unlawful “for any person, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction: (1) to cheat or defraud or attempt to cheat or defraud any person; (2) [w]illfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or (3) [w]illfully to deceive or attempt to deceive any person by any means whatsoever.”

57. During the Relevant Period, Defendants violated 7 U.S.C. § 6b(a)(2)(A)-(C) and 17 C.F.R. § 5.2(b)(1)-(3), by, among other things:

- a. Falsely claiming to Pool Participants that Carducci was a highly successful forex trader with \$12 million of client funds under management;
- b. Falsely promising Pool Participants that their funds would be used to trade forex;
- c. Falsely promising Pool Participants that their funds would generate profits of 8%-18% per month without losses;
- d. Falsely promising Pool Participants that they could withdraw their funds with 7-10 business days’ notice;
- e. Issuing false written account statements to Pool Participants; and
- f. Misappropriating Pool Participants’ funds for Carducci’s personal benefit and to pay other Pool Participants in the nature of a Ponzi scheme.

58. Defendants committed the acts and practices described above using instrumentalities of interstate commerce, including the use of interstate wires for transfer of funds.

59. Defendants committed the acts and practices described herein willfully, or with reckless disregard for the truth.

60. The foregoing acts, omissions and failures as alleged in this Count of Carducci, and of all other agents of VOS Capital, occurred and are occurring within the scope of their employment, office or agency with VOS Capital; therefore, VOS Capital is liable for these acts, omissions and failures pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2018).

61. Carducci directly or indirectly controls VOS Capital, and did not act in good faith or knowingly induced, directly or indirectly, VOS Capital's violations alleged in this Count, and is thus liable for VOS Capital's violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).

62. Each act of misrepresentation, omission of material fact, and misappropriation, including, but not limited to, those specifically alleged herein, constitutes a separate and distinct violation of 7 U.S.C. § 6b(a)(2)(A)-(C) and 17 C.F.R. § 5.2(b)(1)-(3).

## **COUNT TWO—AGAINST ALL DEFENDANTS**

### **Violations of Section 4o(1)(A)-(B) of the Act, 7 U.S.C. § 6o(1)(A)-(B) (2012)** **(Fraud by a CPO and an Associated Person of a CPO)**

63. Paragraphs 1 through 62 are re-alleged and incorporated herein by reference.

64. 7 U.S.C. § 6o(1) makes it unlawful for CPOs and APs of CPOs by use of the mails or any other means or instrumentality of interstate commerce, directly or indirectly – (A) to employ any device, scheme, or artifice to defraud any client or participant or



prospective client or participant; or (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

65. As alleged herein, during the Relevant Period, VOS Capital, through Carducci, acted as a CPO by operating, or soliciting funds for, a pooled investment vehicle that is not an ECP and that engages in retail forex transactions.

66. Carducci acted as an AP of a CPO because he was associated with a CPO as a partner, officer, employee, consultant, or agent in a capacity that involved the solicitation of funds, securities, or property for participation in a pooled investment vehicle.

67. VOS Capital, through Carducci, and Carducci in his individual capacity, violated 7 U.S.C. § 6o(1)(A)-(B), in that by use of the mails or any other means or instrumentality of interstate commerce, they employed or are employing a device, scheme, or artifice to defraud actual or prospective Pool Participants, or engaged or are engaging in transactions, practices, or a course of business which operated or operates as a fraud or deceit upon actual or prospective Pool Participants.

68. Carducci directly or indirectly controls VOS Capital, and did not act in good faith or knowingly induced, directly or indirectly, VOS Capital's violations alleged in this Count, and is thus liable for VOS Capital's violations pursuant to 7 U.S.C. § 13c(b).

69. The foregoing acts, omissions and failures of Carducci as alleged in this Count, and of all other agents of VOS Capital, occurred and are occurring within the scope of their employment, office or agency with VOS Capital; therefore, VOS Capital is liable for these acts, omissions and failures pursuant to 7 U.S.C. § 2(a)(1)(B) (2012) and 17 C.F.R. § 1.2 (2018).

70. Each misrepresentation, omission of material fact, and misappropriation, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. § 6o(1)(A)-(B).

**COUNT THREE—AGAINST DEFENDANT VOS CAPITAL**

**Violations of Sections 2(c)(2)(C)(iii)(I)(cc) and 4m(1) of the Act, 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6m(1) (2012), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2018)**

**(Failure to Register as a Commodity Pool Operator)**

71. Paragraphs 1 through 70 are re-alleged and incorporated herein by reference.

72. As alleged herein, during the Relevant Period, Defendant VOS Capital, which was not exempt from registration as a CPO, acted as a CPO and made use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO by operating or soliciting funds for a pooled investment vehicle that is not an ECP and that engages in retail forex transactions. VOS Capital engaged in this conduct without being registered with the Commission as a CPO in violation of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc) and 6m(1), and 17 C.F.R. § 5.3(a)(2)(i).

73. Carducci directly or indirectly controls VOS Capital, and did not act in good faith or knowingly induced, directly or indirectly, VOS Capital's violations alleged in this Count, and is thus liable for VOS Capital's violations pursuant to 7 U.S.C. § 13c(b).

**COUNT FOUR—AGAINST DEFENDANT CARDUCCI**

**Violations of Sections 2(c)(2)(C)(iii)(I)(cc) and 4k(2) of the Act (2012), 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6k(2) (2012), and 17 C.F.R. § 5.3(a)(2)(ii) (2018)**  
**(Failure to Register as an Associated Person of a Commodity Pool Operator)**

74. Paragraphs 1 through 73 are re-alleged and incorporated herein by reference.

75. During the Relevant Period, Defendant Carducci acted as an associated person of a CPO by operating or soliciting funds, securities, or property for the VOS Capital pooled

investment vehicle, which was not ECP, in connection with off-exchange leveraged or margined forex transactions. Carducci engaged in this conduct without being registered with the Commission as an AP of CPO VOS Capital, in violation of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc) and 6k(2), and 17 C.F.R. § 5.3(a)(2)(ii).

76. The foregoing acts, omissions and failures of Carducci as alleged in this Count, occurred and are occurring within the scope of his employment, office or agency with VOS Capital; therefore, VOS Capital is liable for these acts, omissions and failures pursuant to Section 7 U.S.C. § 2(a)(1)(B) (2012) and 17 C.F.R. § 1.2.

## **VI. RELIEF REQUESTED**

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

A. Enter an order finding that:

1. Defendants VOS Capital and Carducci violated Sections 2(c)(2)(C)(iii)(I)(cc), 4b(a)(2)(A)-(C), and 4o(1)(A)-(B) of the Act, 7 U.S.C. 6b(a)(2)(A)-(C), 6o(1)(A)-(B) (2012), and Regulation 5.2(b)(1)-(3), 17 C.F.R. § 5.2(b) (1)-(3) (2018);
2. Defendant VOS Capital violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012), and Regulation 5.3(a)(2)(i), 17 C.F.R. § 5.3(a)(2)(i) (2018) and Defendant Carducci, as a controlling person pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), is liable for Defendant VOS Capital's violations of the Act and Regulations; and
3. Defendant Carducci violated Section 4k(2) of the Act, 7 U.S.C. § 6k(2)(2012), and Regulation 17 C.F.R. § 5.3(a)(2)(ii) (2018), and Defendant VOS Capital,

as principal pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2018), is liable for Defendant Carducci's violations of the Act and Regulations.

B. Enter an order of permanent injunction restraining, enjoining and prohibiting Defendants Carducci and VOS Capital, and their affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons or entities in active concert with them, who receive actual notice of such order by personal service or otherwise, from engaging in the conduct described above, in violation of 7 U.S.C. §§ 2(c)(2)(C)(iii)(I)(cc), 6b(a)(2)(A) and (C), 6o(1)(A)-(B), 6k(1) and 6m(1) (2012), and 17 C.F.R. §§ 5.2(b) (1) and (3), and 5.3(a)(2)(i)-(ii) (2018).

C. Enter an order of permanent injunction restraining, enjoining and prohibiting Defendants Carducci and VOS Capital, and their affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons or entities in active concert with them, who receive actual notice of such order by personal service or otherwise, from, directly or indirectly:

1. Trading on or subject to the rules of any registered entity (as that term is defined by Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012));
2. Entering into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. 1.3 (2018)), for accounts held in the name of any Defendant or for accounts in which any Defendant has a direct or indirect interest;
3. Having any commodity interests traded on any Defendant's 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 interests;

5. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling of any commodity interests;
6. Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC except as provided for in Regulation 4.14(a) (9), 17 C.F.R. § 4.14(a) (9) (2018); and
7. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. §3.1(a) (2018)), agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a) (9) (2018).

D. Enter an order requiring Defendants, as well as any third-party transferee and/or successors thereof, to disgorge, pursuant to such procedure as the Court may order, 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 and Regulations as described herein, including pre-judgment interest thereon from the date of such violations, plus post-judgment interest.

E. Enter an order requiring Defendants, as well as any successors thereof, to make full restitution, pursuant to such procedure as the Court may order, to every person or entity who sustained losses proximately caused by Defendants' violations, including pre-judgment and post-judgment interest.

F. Enter an order directing Defendants and any of their successors, to rescind, pursuant to such procedures as the Court may order, all contracts and agreements, whether

implied or express, entered into between, with or among Defendants and any of the clients whose funds were received by them as a result of the acts and practices which constituted violations of the Act and Regulations as described herein.

G. Enter an order requiring each Defendant to pay a civil monetary penalty under the Act, to be assessed by the Court, in an amount not to exceed the penalty described by Section 6c(d)(1) of the Act, 7 U.S.C. §13a-1(d)(1) (2012), as adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, Tit. VII, §701, 129 Stat. 584, 599-600, *see* Regulation 143.8, 17 C.F.R. §143.8 (2018) for each violation of the Act and Regulations, as described herein.

H. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2413(a)(2) (2012).

I. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated: September 9, 2019

Respectfully submitted,

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