

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

COMMODITY FUTURES TRADING COMMISSION,	)	
	)	CIVIL ACTION NO. 3:19-cv-690
Plaintiff,	)	
v.	)	<b>Complaint for Injunctive Relief,</b>
	)	<b>Restitution, Civil Monetary Penalties,</b>
TATE STREET TRADING, INC. and	)	<b>and Other Equitable Relief</b>
LEONARD J. CIPOLLA,	)	<b>Under the Commodity Exchange Act</b>
	)	
Defendants.	)	
	)	
	)	

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

**I. SUMMARY**

1. From at least June 2009 through at least April 2019 (“Relevant Period”), Tate Street Trading, Inc. (“Tate Street”), by and through its principal, Leonard J. Cipolla (“Cipolla”), (collectively, “Defendants”), and Cipolla directly, fraudulently solicited and received approximately \$7,096,303 from at least forty-two individuals (“pool participants”), who are not eligible contract participants (“ECPs”). Defendants solicited and received these funds in connection with pooled trades in commodity futures contracts (“futures”) and options on commodity futures contracts (“options”). In doing so, Defendants misappropriated approximately \$5,573,785 of pool participant funds for business expenses, personal use, and to make Ponzi-like payments to other pool participants. Defendants also made false and misleading representations to pool participants. Furthermore, at no time during the Relevant Period was

Tate Street registered with the CFTC as a commodity pool operator (“CPO”), nor was Cipolla registered with the CFTC as a commodity trading advisor (“CTA”).

2. By virtue of this conduct, and the further conduct described herein, Defendants have violated the following provisions of the Commodity Exchange Act (“Act” or “CEA”) and the Commission Regulations promulgated thereunder: Sections 4b(a)(1)(A)-(C), 4o(1)(A) and (B), 4c(b), and 4m(1) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6o(1)(A) and (B), 6c(b), and 6m(1) (2012); and Commission Regulation 32.4(a)-(c), 17 C.F.R. § 32.4(a)-(c) (2019).

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

4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), the CFTC brings this action to enjoin Defendants’ unlawful acts and practices, to compel their compliance with the Act and Commission Regulations, and to enjoin them from engaging in any commodity options related activities. In addition, the CFTC seeks civil monetary penalties, restitution, and remedial ancillary relief, including, but not limited to, trading and registration bans, disgorgement, pre- and post-judgment interest, and such other and further relief as the Court may deem necessary and appropriate.

## **II. JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2012) (federal question jurisdiction) and 28 U.S.C. § 1345 (2012) (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). Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2012), authorizes the Commission to seek injunctive relief against any person whenever it shall appear

that such person has engaged, is engaging, or is about to engage in any act or practice that violates any provision of the Act or any rule, regulation, or order promulgated thereunder.

6. Venue properly lies with this Court pursuant to Section 6c of the Act because Defendants are found in, inhabit, or transact business in this District, or the acts and practices in violation of the Act and Commission Regulations occurred, or are occurring, or are about to occur within this District, among other places.

### III. THE PARTIES

7. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1-26 (2012) and the Commission Regulations promulgated thereunder, 17 C.F.R. pts. 1-190 (2019).

8. Defendant **Tate Street Trading, Inc.** is a business organized under the laws of the Commonwealth of Virginia and incorporated as of October 30, 2008, with its principal place of business in Richmond, Virginia. Tate Street has never been registered with the CFTC in any capacity.

9. Defendant **Leonard Joseph Cipolla** currently resides in Chesterfield, Virginia. He serves as the president and treasurer of Tate Street. Cipolla has never been registered with the CFTC in any capacity.

### IV. FACTS

#### A. The Purpose and Organization of Tate Street Trading

10. Cipolla established Tate Street to facilitate his trading of various financial instruments, including futures and options.

11. Cipolla and his wife are the sole officers and directors of Tate Street. Cipolla controls the day-to-day operations of Tate Street and was responsible for Tate Street's bank and trading accounts. His wife plays no role in operations of Tate Street.

12. During the Relevant Period, Tate Street was a commodity pool as defined in Section 1(a)(10) of the Act, 7 U.S.C. § 1(a)(10) (2012), because Tate Street was an investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests, including commodity futures contracts and options on commodity futures contracts.

13. During the Relevant Period, Cipolla was a commodity trading advisor as defined in Section 1(a)(12) of the Act because Cipolla, for compensation or profit, engaged in the business of advising Tate Street as to value of or the advisability of trading in futures or options.

**B. Defendants' Acceptance of Pool Participant Funds**

14. Beginning in 2009, Defendants accepted funds from pool participants, promising a fixed rate of return over a period of months or years.

15. During the Relevant Period, Defendants accepted approximately \$7,096,303 from pool participants for the purpose of trading futures and options.

16. At Cipolla's direction, pool participants transferred funds via check, wire, and electronic transfer into bank accounts in the name of Tate Street. Cipolla established and was solely responsible for the bank accounts operated by Tate Street.

17. A number of pool participants received written agreements from Tate Street memorializing the amount(s) of money each initially placed with Tate Street, the promised fixed minimum rate of return, and the duration of the agreement.

18. Cipolla was solely responsible for drafting the agreements provided to pool participants.

19. Based on their interactions with Cipolla, pool participants whose agreements were not reduced to writing understood that Defendants promised a fixed minimum rate of return over a period of months or years.

20. Some of the agreements entered into by Tate Street and various pool participants provided for monthly or other periodic payments by Tate Street to the pool participants.

21. Based on their interactions with Cipolla, pool participants understood that the funds they placed with Tate Street were for trading.

**C. Defendants' Representations About Promised Returns**

22. Based on their interactions with Cipolla, various pool participants understood that he did very well trading. Typically, Defendants promised pool participants returns of between 8% and 30% per year.

23. Cipolla told at least one prospective pool participant that he could generate 30% returns in a good month and would personally absorb losses in a bad month.

24. Cipolla told at least two prospective pool participants that he made a 25% return on investments.

25. Cipolla told at least one prospective pool participant that he could make her a lot of money trading options.

26. Cipolla told at least one prospective pool participant that he retained as compensation any profits beyond the returns promised to pool participants.

27. Cipolla told at least one pool participant that Defendants never suffered any losses until 2018.

28. In 2018, Cipolla told at least one prospective pool participant that while Defendants had good and bad months trading, Cipolla made money trading overall.

29. Cipolla told at least one prospective pool participant that Defendants had protections against losses.

30. Cipolla told prospective pool participants that he would retain any trading profits above the rate of return Defendants promised.

31. Defendants provided some prospective pool participants with documents (sometimes styled “month-to-month cash flow statement”) purporting to show how their funds would increase over the life of their agreement with Defendants.

**D. Defendants’ Representations and Omissions About Use of Pool Participant Funds**

32. When prospective pool participants inquired about how Defendants anticipated generating the promised returns, Cipolla explained that he traded options, including options on oil futures contracts and options on S&P 500 futures contracts, among others.

33. Based on their interactions with Cipolla, pool participants believed that all of the funds placed with Tate Street would be traded on their behalf.

34. Cipolla did not tell prospective pool participants that their funds would be used to pay his business and personal expenses.

35. Cipolla did not tell prospective pool participants that their funds would be used to make payments to other pool participants.

**E. Defendants Misappropriated Pool Participant Funds to Pay Personal and Business Expenses While Using Only a Fraction of Pool Participant Funds to Trade**

36. As noted above, Defendants accepted approximately \$7,096,303 from pool participants. Of those funds, Defendants misappropriated approximately \$2,506,958 for business expenses or personal use, while using only approximately \$1,462,834 to trade futures and options, and making approximately \$3,066,827 in Ponzi-like payments to pool participants.

37. Defendants initially deposited funds received from pool participants into one of two bank accounts maintained in the name of Tate Street. From there, some of the funds were transferred to trading accounts maintained in the name of Tate Street.

38. Cipolla alone decided which Tate Street bank account would receive pool participant funds. Cipolla also decided when to transfer pool participant funds into the Tate Street trading accounts.

39. During the Relevant Period, Defendants maintained at least eighteen trading accounts at various futures commission merchants and other brokerage houses. During the Relevant Period, Defendants traded futures and options.

40. Despite having accepted approximately \$7,096,303 from pool participants, Defendants transferred only approximately \$1,462,834 of pool participant funds into trading accounts.

41. During the Relevant Period, Defendants used pool participant funds to pay for business and personal expenses. For example, during a portion of the relevant period, Cipolla made monthly payments of approximately \$5,000 to his wife from the bank accounts of Tate Street to cover personal household expenses.

42. Cipolla also used funds drawn from the Tate Street bank accounts to make loans or gifts to various individuals, and to fund a restaurant.

**F. Defendants Misappropriated Pool Participant Funds to Make Periodic Payments to Other Pool Participants**

43. Defendants used pool participant funds to make Ponzi-like payments to other participants.

44. Based on his dealings with Cipolla, at least one pool participant who received payments from Defendants understood that the monthly payments were strictly from trading profits.

45. During the Relevant Period, Defendants made approximately \$3,066,827 in periodic payments to pool participants.

46. As described below, for most of the Relevant Period, Defendants were unprofitable trading pool participant funds. To the extent that Defendants' trading generated profits, those profits were not sufficient to sustain the periodic payments to pool participants.

47. On several occasions, after depositing funds provided by one pool participant into Tate Street's bank accounts, Cipolla made payments from those accounts directly to other pool participants.

**G. Defendants Misrepresented Tate Street's Trading Performance; Defendants' Trading Was Not Profitable Overall**

48. Cipolla was solely responsible for developing and executing Tate Street's trading strategies and decisions.

49. As described above, Cipolla told various prospective pool participants that he had a good track record as a trader.

50. In the period June through December 2009, Cipolla's net transfers into Tate Street trading accounts totaled approximately \$10,000. Tate Street's trading was not profitable in any month that year and resulted in net loss of approximately \$8,534 for 2009.

51. During 2010, Cipolla's net transfers into Tate Street trading accounts totaled approximately \$83,000. Tate Street's trading was profitable during only five months of the year and resulted in a net loss of approximately \$12,442 for 2010.

52. During 2011, Cipolla's net transfers into Tate Street trading accounts totaled approximately \$183,230. Tate Street's trading was profitable during only four months of the year and resulted in a net loss of approximately \$37,513 for 2011.

53. During 2012, Cipolla's net transfers into Tate Street trading accounts totaled approximately \$269,232. Tate Street's trading was profitable during nine months of the year and resulted in a net gain of approximately \$236,558 for 2012.

54. During 2013, Cipolla's net transfers into Tate Street trading accounts totaled approximately \$213,994. Tate Street's trading was profitable during only six months of the year and resulted in a net loss of approximately \$453,083 for 2013.

55. During 2014, Cipolla's net transfers into Tate Street trading accounts resulted in approximately \$125,772 being withdrawn from the trading accounts. Tate Street's trading was profitable during eight months of the year and resulted in a net gain of approximately \$100,576 for 2014.

56. During 2015, Cipolla's net transfers into Tate Street trading accounts totaled approximately \$157,996. Tate Street's trading was profitable during only four months of the year and resulted in a net loss of approximately \$445,152 for 2015.

57. During 2016, Cipolla's net transfers into Tate Street trading accounts totaled approximately \$387,992. Tate Street's trading was profitable during only six months of the year, and resulted in a net loss of approximately \$109,044 for 2016.

58. During 2017, Cipolla's net transfers of pool participant funds into Tate Street trading accounts totaled approximately \$203,000. Tate Street's trading was profitable only five months of the year, and resulted in a net loss of approximately \$583,116 for 2017.

59. During 2018, Cipolla's net transfers of pool participant funds into Tate Street trading accounts totaled approximately \$80,160. Tate Street's trading was profitable only two months of the year, and resulted in a net loss of approximately \$149,633 for 2018.

60. From January through April 2019, Cipolla did not transfer any pool participant funds into Tate Street trading accounts. Although Cipolla did not trade in the Tate Street trading accounts during January through April 2019, the trading accounts continued to incur fees.

61. In sum, during the Relevant Period, cumulative deposits of pool participant funds by Cipolla into Tate Street trading accounts totaled approximately \$1,462,834. Trading with those funds resulted in a cumulative net loss of approximately \$1,462,305.

**H. Defendants Provided Statements to Pool Participants That Did Not Accurately Reflect Tate Street's Trading Performance**

62. Defendants promised to provide monthly or quarterly statements to pool participants.

63. At least one pool participant signed an agreement provided by Tate Street which provided that statements would be issued once a month, "typically the last week of the month or after the monthly trading is complete."

64. Defendants provided periodic statements to pool participants. Those statements typically referred to an "interest rate per month" and "interest earned."

65. Based on their interactions with Cipolla, pool participants understood that the statements they received from Defendants reflected funds held on their behalf by Tate Street.

66. The statements Defendants provided to pool participants did not accurately reflect Defendants' trading results using pool participant funds.

67. Despite substantial trading losses during the Relevant Period, none of the statements Defendants provided to pool participants gave any indication that pool participant funds had been lost.

## **V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

### **Count One**

#### **Fraud in Connection with Commodity Futures Contracts Violations of Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C) (2012)**

68. The allegations in the preceding paragraphs are re-alleged and incorporated herein by reference.

69. 7 U.S.C. § 6b(a)(1)(A)-(C) makes it unlawful for any person to: (A) cheat or defraud or attempt to cheat or defraud another person; (B) willfully to make a false report or statement to another person; or (C) willfully to deceive or attempt to deceive another person by any means whatsoever in connection with any contract of sale of any commodity in interstate commerce or for future delivery, that is made, or to be made, on or subject to the rules of a designated contract market.

71. As set forth above, during the Relevant Period, Defendants violated 7 U.S.C. § 6b(a)(1)(A)-(C) by, among other things: (i) misappropriating pool participant funds; (ii) making, causing to be made; and distributing reports or statements to pool participants that contain false information; and (iii) fraudulently soliciting pool participants in connection with futures, including the purported trading of futures conducted or to be conducted by Defendants on behalf of pool participants.

72. Each act of misappropriation, misrepresentation or omission of material fact, and issuance of a false report, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. § 6b(a)(1)(A)-(C).

73. Defendants engaged in the acts and practices alleged above knowingly, willfully, or with reckless disregard for the truth.

74. Cipolla directly and indirectly controlled Tate Street and did not act in good faith or knowingly induced the acts constituting Tate Street's violations, and is therefore liable, pursuant to 7 U.S.C. § 13c(b), for Tate Street's violations of 7 U.S.C. § 6b(a)(1)(A)-(C).

75. Cipolla acted within the course and scope of his employment, agency, or office with Tate Street. 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 (2019), Tate Street is liable as principal for Cipolla's violations of 7 U.S.C. § 6b(a)(1)(A)-(C).

## **Count Two**

### **Fraud by a Commodity Pool Operator and Commodity Trading Advisor Violations of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A), (B) (2012)**

76. The allegations in the preceding paragraphs are re-alleged and incorporated herein by reference.

77. 7 U.S.C. § 6o(1)(A) and (B), in relevant part, makes it unlawful for CPOs and CTAs, by use of the mails or any other means of interstate commerce, directly or indirectly, to:

- (A) employ any device, scheme, or artifice to defraud any client or pool participant; or
- (B) engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or pool participant.

78. 7 U.S.C. § 6o(1)(A) and (B) applies to all CPOs and CTAs, whether registered, required to be registered, or exempted from registration.

79. Section 1(a)(11) of the Act, 7 U.S.C. § 1(a)(11) defines a CPO, in part, as “any person engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds . . . for the purpose of trading in commodity interests.”

80. Section 1(a)(12)(A) of the Act, 7 U.S.C. § 1(a)(12)(A) (2012) defines a CTA, in part, as “any person who, for compensation or profit, engages in the business that is of advising others , either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading” futures or options.

81. As set forth above, during the Relevant Period, Tate Street acted as a CPO by soliciting, accepting, or receiving funds from others while engaged in a business that is of the nature of an investment trust, syndicate, or other pooled investment vehicle, for the purpose of, among other things, conducting transactions in commodity interests, including futures and options.

82. Further, Cipolla acted as a CTA when he, for compensation or profit, advised and directed the trading of pool participant funds undertaken by Tate Street.

83. As set forth above, Tate Street and Cipolla violated 7 U.S.C. § 6o(1)(A) and (B), in that, by use of the mails or other means of interstate commerce, they employed or are employing a device, scheme or artifice to defraud pool participants and/or engaged or is engaging in transactions, practices, or a course of business which operated or operate as a fraud or deceit upon pool participants by, among other things: (i) misappropriating their funds; (ii) making, causing to be made, and distributing reports or statements to pool participants that

contained false information; and (iii) fraudulently soliciting pool participants, all in connection with the purported trading of commodity interests conducted or to be conducted by Tate Street and Cipolla on behalf of pool participants.

84. Each act of misappropriation, misrepresentation or omission of material fact, and issuance of a false report, 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) and/or (B).

85. Cipolla directly and indirectly controlled Tate Street and did not act in good faith or knowingly induced the acts constituting Tate Street's violations, and is therefore liable, pursuant to 7 U.S.C. § 13c(b), for Tate Street's violations of 7 U.S.C. § 6o(1)(A) and/or (B).

86. Cipolla acted within the course and scope of his employment, agency, or office with Tate Street. Pursuant to 7 U.S.C. § 2(a)(1)(B) (2012), and 17 C.F.R. § 1.2 (2019), Tate Street is liable as principal for Cipolla's violations of 7 U.S.C. § 6o(1)(A) and/or (B).

### **Count Three**

#### **Options Fraud and Misappropriation Violations of Section 4c(b) of the Act, 7 U.S.C. §6c(b) (2012) and Commission Regulation 32.4(a)-(c), 17 C.F.R. § 32.4(a)-(c) (2019)**

87. The allegations in the preceding paragraphs are realleged and incorporated herein by reference.

88. Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2012), makes it unlawful to "offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this Act which is of the character of, or is commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guarantee', or 'decline guarantee', contrary to any rule, regulation or order of the Commission prohibiting any such

transaction or allowing such transaction under such terms and conditions as the Commission may prescribe.”

89. 17 C.F.R. § 32.4(a)-(c) (2019) makes it unlawful for any person, in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction, directly or indirectly, to: (a) cheat or defraud or attempt to cheat or defraud any other person; (b) make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; or (c) deceive or attempt to deceive any other person by any means whatsoever.

90. As set forth above, during the Relevant Period, Defendants violated 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4(a)-(c) by, among other things: (i) misappropriating pool participant funds; (ii) making, causing to be made, and distributing reports or statements to pool participants that contained false information; and (iii) fraudulently soliciting pool participants, all in connection with the purported trading of commodity options conducted or to be conducted by Defendants on behalf of pool participants.

91. Defendants’ misappropriation, misrepresentations, and issuance of false account documents to pool participants were done knowingly or with a reckless disregard as to their truth or falsity.

92. Each act of misappropriation and fraudulent misrepresentation, including, but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4(a)-(c).

93. Each issuance of false account documents to pool participants, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4(a)-(c).

94. Defendants engaged in the acts and practices alleged above knowingly, willfully, or with reckless disregard for the truth.

95. Cipolla directly and indirectly controlled Tate Street and did not act in good faith or knowingly induced the acts constituting Tate Street's violations, and is therefore liable, pursuant to 7 U.S.C. § 13c(b), for Tate Street's violations of 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4(a)-(c).

96. Cipolla acted within the course and scope of his employment, agency, or office with Tate Street. Pursuant to 7 U.S.C. § 2(a)(1)(B) (2012), and 17 C.F.R. § 1.2 (2019), Tate Street is liable as principal for Cipolla's violations of 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4(a)-(c).

#### **Count Four**

##### **Failure to Register as a CPO Violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012)**

97. The allegations in the preceding paragraphs are realleged and incorporated herein by reference.

98. With certain specified exceptions and exemptions not applicable here, 7 U.S.C. § 6m(1) (2012), makes it unlawful for any CPO to make use of the mails or any means or instrumentality of interstate commerce in connection with its business unless it is registered with the CFTC.

99. 7 U.S.C. § 1a(11) (2012), defines a CPO, in part, as "any person engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or other similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds . . . for the purpose of trading in commodity interests." Commission Regulation 1.3, 17 C.F.R. § 1.3 (2019), in turn, defines commodity interest to include, in part, "[a]ny contract for

the purchase or sale of a commodity for future delivery, i.e., commodity futures, or “[a]ny contract, agreement or transaction under section 4c . . . of the Act,” i.e., commodity options.

100. As set forth above, Tate Street acted as a CPO during the Relevant Period in that it conducted a business that solicited, accepted, and received funds from multiple pool participants and then pooled those funds together in the group account for purposes of trading in commodity interests.

101. As set forth above, Tate Street used the mails or other means or instrumentalities of interstate commerce in connection with their business.

102. Tate Street violated 7 U.S.C. § 6m(1) (2012) by engaging in these activities without having registered as a CPO.

103. Each use by Tate Street of the mails or any means or instrumentality of interstate commerce in connection with their business as a CPO without proper registration, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. § 6m(1) (2012).

### **Count Five**

#### **Failure to Register as a CTA Violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012)**

104. The allegations in the preceding paragraphs are realleged and incorporated herein by reference.

105. With certain specified exceptions and exemptions not applicable here, 7 U.S.C. § 6m(1) (2012), makes it unlawful for any CTA to make use of the mails or any means or instrumentality of interstate commerce in connection with its business unless it is registered with the CFTC.

106. 7 U.S.C. § 1a(12) (2012) defines a CTA as “any person who, for compensation or profit, engages in the business that is of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading” futures or options.

107. As set forth above, Cipolla acted as a CTA when he, for compensation or profit, advised and directed the trading of pool participants’ funds.

108. As set forth above, Cipolla used the mails or other means or instrumentalities of interstate commerce in connection with Tate Street’s business.

109. Cipolla violated 7 U.S.C. § 6m(1) (2012) by engaging in these activities without having registered as a CTA.

110. Each use by Cipolla of the mails or any means or instrumentality of interstate commerce in connection with Tate Street’s business without proper registration, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. § 6m(1) (2012).

## **VI. PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), and pursuant to its own equitable powers:

- (A) Find that Defendants violated Sections 4b(a)(1)(A)-(C), 4o(1)(A) and (B), 4c(b), 4m(1), and of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6o(A), (B), 6c(b), 6m(1), (2012), and Regulation 32.4(a)-(c), 17 C.F.R. § 32.4(a)-(c) (2019);
- (B) Enter an order of permanent injunction prohibiting Defendants and their affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons in active concert with them, who receive actual notice of such order by personal service or otherwise, from:

- (1) cheating or defrauding another person, willfully making a false report or statement to another person, or willfully deceiving attempting to deceive another person by any means whatsoever in connection with any contract of sale of any commodity in interstate commerce or for future delivery, that is made, or to be made, on or subject to the rules of a designated contract market in violation of 7 U.S.C. § 6b(a)(1)(A)-(C);
  - (2) in connection with a commodity pool, by use of the mails or any other means of interstate commerce, directly or indirectly: employing any device, scheme, or artifice to defraud any client or pool participant; engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or pool participant in violation of 7 U.S.C. § 6o(1)(A) and (B);
  - (3) offering to enter into, entering into or confirming the execution of, any transaction involving any commodity regulated under this Act which is of the character of, or is commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guarantee', or 'decline guarantee', contrary to any rule, regulation or order of the Commission prohibiting any such transaction or allowing such transaction under such terms and conditions as the Commission may prescribe, in violation of 7 U.S.C. § 6c(b);
  - (4) in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction, directly or indirectly: (a) cheating or defrauding or attempting to cheat or defraud any other person; (b) making or causing to be made to any other person any false report or statement thereof or causing to be entered for any person any false record thereof; or (c) deceiving or attempting to deceive any other person by any means whatsoever, in violation of 17 C.F.R. § 32.4(a)-(c);
- (C) Enter an order of permanent injunction prohibiting Tate Street and its affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons in active concert with it, who receive actual notice of such order by personal service or otherwise, from making use of the mails or any means or instrumentalities of interstate commerce while engaged in the business of a CPO, that is, a business that is of the nature of a commodity pool, investment trust, syndicate, or other similar form of enterprise, and, in connection therewith, soliciting, accepting, or receiving from others, funds for the purpose of trading in commodity interests,

without having first registered with the CFTC as a CPO, in violation of 7 U.S.C. §6m(1);

- (D) Enter an order of permanent injunction prohibiting Cipolla and his affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons in active concert with them, who receive actual notice of such order by personal service or otherwise, from making use of the mails or any means or instrumentalities of interstate commerce while, for compensation or profit, engaged in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading” futures or options, without having first registered with the CFTC as a CTA, in violation of 7 U.S.C. § 6m(1);
- (E) Enter an order of permanent injunction prohibiting Defendants and any of their agents, servants, employees, assigns, attorneys, and persons in active concert or participation with them including any successor thereof, from directly or indirectly:
- (1) trading on or subject to the rules of any registered entity (as that term is defined in Section 1(a)(40) of the Act, 7 U.S.C. § 1a(40) (2012));
  - (2) entering into any transaction involving “commodity interests” (as that term is defined in Commission Regulation 1.3, 17 C.F.R. § 1.3 (2019)) for Defendants own personal or proprietary accounts or for any account in which Defendants have a direct or indirect interest;
  - (3) having any commodity interest traded on Defendants’ 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 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 in Commission Regulation 4.41(a)(9), 17 C.F.R. § 4.41(a)(9) (2019);
  - (7) acting as a principal (as that term is defined in Commission Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2019)), agent, or 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, exempted from registration or required to be registered with the CFTC, except as provided in 17 C.F.R. § 4.41(a)(9).
- (F) Enter an order directing Defendants, as well as any 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 that constitute violations of the Act and the Commission Regulations, as described herein, and pre- and post-judgment interest;
- (G) An order directing Defendants, as well as any successors thereof, to make full restitution to every person who has sustained losses proximately caused by the violations described herein, including pre- and post-judgment interest;
- (H) An order directing Defendants to pay a civil monetary penalty for each violation of the Act of not more than the amount set forth 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, 129 Stat. 584 (2015), title VII, Section 701, and promulgated in 17 C.F.R. § 143.8 (2019), plus post-judgment interest;
- (I) An order requiring Defendants to pay costs and fees as permitted by

28 U.S.C. §§ 1920 and 2412(a)(2) (2012); and

- (J) An order providing such other and relief as this Court may deem necessary and appropriate under the circumstances.

Dated: September 19, 2019

Respectfully submitted,

/s/ James W. Deacon  
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