

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

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COMMODITY FUTURES TRADING)		
COMMISSION,)	CIVIL ACTION NO. 3:19-cv-00690-JAG	
)		
Plaintiff,)		
)		
v.)		
)		
TATE STREET TRADING, INC. and)		
LEONARD J. CIPOLLA,)		
)		
Defendants.)		
)		
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**CONSENT ORDER FOR PERMANENT INJUNCTION
RESTITUTION AND ANCILLARY EQUITABLE RELIEF
AGAINST DEFENDANT LEONARD J. CIPOLLA**

I. INTRODUCTION

On September 19, 2019, the Commodity Futures Trading Commission (“Commission” or “CFTC”) filed its Complaint (ECF No. 1) in this matter against Tate Street Trading, Inc. (“Tate Street”) and Leonard J. Cipolla (“Cipolla”) (collectively “Defendants”) seeking injunctive and other equitable relief for violations of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 1-26 (2018), and Commission Regulations (“Regulations”), 17 C.F.R. §§ 1-190 (2020)

II. CONSENTS AND AGREEMENTS

To effect settlement of all charges alleged in the Complaint against Cipolla without a trial on the merits or any further judicial proceedings, Cipolla:

1. Consents to the entry of this Consent Order for Permanent Injunction, Restitution and Ancillary Equitable Relief Against Defendant Leonard J. Cipolla (“Consent Order”);
2. Affirms that he has read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the CFTC or any member, officer, agent, or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledges service of the summons and Complaint;
4. Admits the jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018);
5. Admits the jurisdiction of the CFTC over the conduct and transactions at issue in this action pursuant to the Act;
6. Admits that venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e);
7. Waives:
 - (a) Any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2018) and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the CFTC in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2020), relating to, or arising from, this action;
 - (b) Any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this action;
 - (c) Any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and
 - (d) Any and all rights of appeal from this action;

8. Consents to the continued jurisdiction of this Court over him for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if Defendant now or in the future resides outside the jurisdiction of this Court;

9. Agrees that he will not oppose enforcement of this Consent Order on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and hereby waives any objection based thereon;

10. Admits that in *United States v. Leonard J. Cipolla*, Case No. 3:19-cr-126 (E.D. Va., Richmond Division), Cipolla pleaded guilty to violating: (i) 18 U.S.C. §§ 1341, 981(a)(1)(C), as incorporated by 28 U.S.C. § 2461(c); and 7 U.S.C §§ 6(m)(1), 6n, 13(a)(5), and further acknowledges that in connection with that plea, Cipolla admitted to the facts set forth in the “Factual Basis” (ECF No. 9, entered September 19, 2019), a copy of which is attached as Exhibit A to this Order.

11. Admits all of the findings of fact made by the Court in Section III.A, below;

12. Agrees to provide immediate notice to this Court and the CFTC by certified mail, in the manner required by paragraph 72 of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him, whether inside or outside the United States; and

13. Agrees that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Cipolla in any other proceeding.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), as set forth herein.

THE COURT HEREBY FINDS:

A. Findings of Fact

The Parties to this Consent Order

14. 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 (2018) and the Commission Regulations promulgated thereunder, 17 C.F.R. pts. 1-190 (2020).

15. Defendant Leonard Joseph Cipolla is currently incarcerated in a federal prison in Hopewell, Virginia. He served as the president and treasurer of Tate Street. Cipolla has never been registered with the CFTC in any capacity.

The Purpose and Organization of Tate Street Trading

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

17. Cipolla acted as a Commodity Trading Advisor (“CTA”) because for compensation or profit he provided commodity trading advice to individuals who placed funds with Tate Street (“pool participants”).

18. Tate Street did not segregate pool participant funds into specific accounts to be traded separately on behalf of each pool participant. Instead, Cipolla pooled all of the funds Tate

Street accepted and used those funds to trade in numerous accounts maintained in the name of Tate Street.

19. 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.

Cipolla's Acceptance of Pool Participant Funds

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

21. During the Relevant Period, Cipolla accepted \$7,096,303.25 from pool participants for the purpose of trading futures and options. Cipolla received those funds through the mail and via wire transfers, both means of interstate commerce.

22. 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.

23. 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.

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

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

26. 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.

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

Cipolla's Representations About Promised Returns

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

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

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

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

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

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

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

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

36. Cipolla 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.

Cipolla’s Representations and Omissions About Use of Pool Participant Funds

37. When prospective pool participants inquired about how Cipolla 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.

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

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

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

Cipolla Misappropriated Pool Participant Funds to Pay Personal and Business Expenses While Using Only a Fraction of Pool Participant Funds to Trade

41. As noted above, Cipolla accepted \$7,096,303.25 from pool participants. Of those funds, Cipolla misappropriated \$2,506,958.64 for business expenses or personal use, while using only \$1,462,834.08 to trade futures and options. In addition, as described further below Cipolla misappropriated pool participant funds to make Ponzi-like payments to pool participants.

42. Cipolla 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.

43. 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.

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

45. Despite having accepted \$7,096,303.25 from pool participants, Cipolla transferred only \$1,462,834.08 of pool participant funds into trading accounts.

46. During the Relevant Period, Cipolla 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.

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

Cipolla Misappropriated Pool Participant Funds to Make Periodic Payments to Other Pool Participants

48. Cipolla used pool participant funds to make Ponzi-like payments to other participants.

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

50. During the Relevant Period, Cipolla made \$3,066,827.73 in periodic payments to pool participants.

51. Some pool participants received payments from Cipolla that exceeded the amounts those participants placed with Tate Street. Other pool participants received payments from Cipolla that did not exceed the amounts those pool participants placed with Tate Street, while still other pool participants received no payments from Cipolla.

52. The difference between the total amount placed by those pool participants who received partial or zero payments from Cipolla and the payments received by those pool participants is \$5,102,283.51.

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

54. 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.

Cipolla Misrepresented Tate Street's Trading Performance; Cipolla's Trading Was Not Profitable Overall

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

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

57. In the period June through December 2009, Cipolla's net transfers into Tate Street trading accounts totaled \$10,000.00. Tate Street's trading was not profitable in any month that year and resulted in net loss of \$8,534.40 for 2009.

58. During 2010, Cipolla's net transfers into Tate Street trading accounts totaled \$83,000.00. Tate Street's trading was profitable during only five months of the year and resulted in a net loss of \$12,442.14 for 2010.

59. During 2011, Cipolla's net transfers into Tate Street trading accounts totaled \$183,230.76. Tate Street's trading was profitable during only four months of the year and resulted in a net loss of \$37,513.98 for 2011.

60. During 2012, Cipolla's net transfers into Tate Street trading accounts totaled \$269,232.00. Tate Street's trading was profitable during nine months of the year and resulted in a net gain of \$236,558.45 for 2012.

61. During 2013, Cipolla's net transfers into Tate Street trading accounts totaled \$213,994.16. Tate Street's trading was profitable during only six months of the year and resulted in a net loss of \$453,083.64 for 2013.

62. During 2014, Cipolla's net transfers into Tate Street trading accounts resulted in \$125,771.43 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 \$100,576.35 for 2014.

63. During 2015, Cipolla's net transfers into Tate Street trading accounts totaled \$157,995.83. Tate Street's trading was profitable during only four months of the year and resulted in a net loss of \$445,152.17 for 2015.

64. During 2016, Cipolla's net transfers into Tate Street trading accounts totaled \$387,992.44. Tate Street's trading was profitable during only six months of the year, and resulted in a net loss of \$109,044.97 for 2016.

65. During 2017, Cipolla's net transfers of pool participant funds into Tate Street trading accounts totaled \$203,000.00. Tate Street's trading was profitable only five months of the year, and resulted in a net loss of \$583,116.13 for 2017.

66. During 2018, Cipolla's net transfers of pool participant funds into Tate Street trading accounts totaled \$80,160.32. Tate Street's trading was profitable only two months of the year, and resulted in a net loss of \$149,633.41 for 2018.

67. 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.

68. In sum, during the Relevant Period, cumulative deposits of pool participant funds by Cipolla into Tate Street trading accounts totaled \$1,462,834.08. Trading with those funds resulted in a cumulative net loss of \$1,462,305.84.

Cipolla Provided Statements to Pool Participants That Did Not Accurately Reflect Tate Street's Trading Performance

69. Cipolla promised to provide monthly or quarterly statements to pool participants.

70. 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."

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

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

73. The statements Cipolla provided to pool participants did not accurately reflect Cipolla's trading results using pool participant funds.

74. 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.

75. Cipolla sent the periodic statements to pool participants by means of interstate commerce, typically by mail.

B. Conclusions of Law

Jurisdiction and Venue

76. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2018) (federal question jurisdiction) and 28 U.S.C. § 1345 (2018) (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 of the Act, 7 U.S.C. § 13a-1 (2018), 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.

77. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2018), because Cipolla resided in this District, Cipolla transacted business in this district, and the acts and practices in violation of the Act occurred within this District.

Cipolla Violated Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C) (2018)

78. 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.

79. By the conduct described in paragraphs 16 through 70 above, Cipolla violated 7 U.S.C. § 6b(a)(1)(A)-(C) by misappropriating pool participants' funds, by making material misrepresentations with scienter, and by willfully issuing false statements.

Cipolla Violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A), (B) (2012)

80. 7 U.S.C. § 6o(1)(A) and (B) (2018), in relevant part, makes it unlawful for a CTA, 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 customer; or (B) engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any customer.

81. 7 U.S.C. § 6o(1)(A) and (B) applies to all CTAs, whether registered, required to be registered, or exempted from registration.

82. 7 U.S.C. § 1a(12) (2018), defines a CTA as any person who for compensation or profit, engages in the business of advising others as to the value or advisability of trading in, among other things, futures contracts or forex transactions.

83. By the conduct described in paragraphs 15 through 73 above, Cipolla violated 7 U.S.C. § 6o(1)(A) and (B) by knowingly or recklessly employing schemes to defraud pool participants and engaging in transactions, practices, and courses of business that operated as a fraud or deceit upon pool participants. More specifically, Cipolla misappropriated pool participants' funds, made material misrepresentations with scienter, and willfully issued false statements.

Cipolla Violated Section 6c(b) of the Act, 7 U.S.C. § 6c(b) (2018), and Regulation 32.4(a)-(c), 17 C.F.R. § 32.4(a)-(c) (2020)

84. 7 U.S.C. § 6c(b) of the Act states, in relevant part:

No person shall 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 guaranty”, or “decline guaranty”, 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 shall prescribe.

85. 17 C.F.R. § 32.4 (a)-(c) makes it unlawful for any person, directly or indirectly, to: (a) cheat or defraud or attempt to cheat or defraud any other person; (b) willfully to make or cause to be made to the other person any false report or statement; or (c) to deceive or attempt to deceive any other person by any means whatsoever, in or in connection with any commodity option transaction.

86. By the conduct described in paragraphs 16 through 73 above, Cipolla violated 7 U.S.C. § 6c(b) and 17 C.F.R. § 32.4(a)-(c) by: (i) misappropriating pool participant funds; (ii) making, causing to be made, and distributing to pool participants reports or statements that contained false information; and (iii) fraudulently soliciting pool participants, all in connection with purported trading of commodity options.

Cipolla Violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2018)

87. 7 U.S.C. § 6m(1) 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.

88. Section 1a(12) of the Act, 7 U.S.C. § 1a(12) (2018), in relevant part, 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” commodity futures or options.

89. By the conduct described in paragraphs 16 through 73 above, Cipolla violated 7 U.S.C. § 6m(1) by making use of the mails or any other instrumentality of interstate commerce in connection with his business as a CTA without having registered as a CTA.

IV. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

90. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), Cipolla is permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Cheating or defrauding, or attempting to cheat or defraud other persons; issuing or causing to be issued false reports; and willfully deceiving or attempting to deceive other persons in connection with any order to make, or the making of, 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, for or on behalf of any other person in violation of Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C) (2018);
- b. Using the mails or other means or instrumentalities of interstate commerce to directly or indirectly employ a device, scheme, or artifice to defraud clients or prospective clients, or engage in transactions, practices, or courses of business which operate as a fraud or deceit upon clients or prospective clients, in violation of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2018);

- c. 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 Section 4c(b) of the Act, 7 U.S.C. § 6c(b) (2018);
- d. 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: (i) cheating or defrauding or attempting to cheat or defraud any other person; (ii) 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 (iii) deceiving or attempting to deceive any other person by any means whatsoever, in violation of Regulation 32.4(a)-(c); 17 C.F.R. § 32.4(a)-(c) (2020);

91. Cipolla is also permanently restrained, enjoined and prohibited from directly or indirectly:

- a. 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) (2018));
- b. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2020)), for his own personal account or for any account in which he has a direct or indirect interest;
- c. Having any commodity interests traded on his behalf;

- d. 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;
- e. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- f. 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) (2020); and/or
- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2020)), 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) (2018)), registered, exempted from registration or required to be registered with the CFTC except as provided for in 17 C.F.R. § 4.14(a)(9) (2020).

V. RESTITUTION

92. Cipolla shall pay restitution in the amount of five million, one hundred two thousand, two hundred eighty-three dollars and fifty-one cents (\$5,102,283.51) (“Restitution Obligation”). As noted above, the Restitution Obligation represents the difference between the total amount placed by those pool participants who received partial or zero payments from Cipolla and the payments received by those pool participants.

93. Cipolla is currently the defendant in a criminal action in which he has admitted, among other things, to misconduct that is at issue in this matter, *United States v. Leonard J. Cipolla*, Case No. 3:19-cr-126 (E.D. Va., Richmond Division) (“Criminal Action”). For

amounts disbursed to Cipolla's pool participants as a result of satisfaction of any restitution ordered in the Criminal Action, Cipolla shall receive a dollar-for-dollar credit against the Restitution Obligation.

94. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Cipolla's clients, the Court appoints the National Futures Association ("NFA") as Monitor ("Monitor"). The Monitor shall receive restitution payments from Defendant and make distributions as set forth below. Because the Monitor is acting as an officer of this Court in performing these services, the NFA shall not be liable for any action or inaction arising from NFA's appointment as Monitor, other than actions involving fraud.

95. Cipolla shall make Restitution Obligation payments under this Consent Order to the Monitor in the name "Leonard J. Cipolla – Settlement/Restitution Fund" and shall send such payments by electronic funds transfer, or by 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 cover letter that identifies Cipolla and the name and docket number of this proceeding. Cipolla 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.

96. The Monitor shall oversee the Restitution Obligation and shall have the discretion to determine the manner of distribution of such funds in an equitable fashion to Cipolla's clients identified by the CFTC or may defer distribution until such time as the Monitor deems appropriate.

97. Cipolla shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Cipolla's pool participants to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation payments. Cipolla shall execute any documents necessary to release funds that he has in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

98. The Monitor shall provide the CFTC at the beginning of each calendar year with a report detailing the disbursement of funds to Cipolla's pool participants during the previous year. The Monitor shall transmit this report under a cover letter that identifies the name and docket number of this proceeding to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

99. The amounts payable to each pool participant shall not limit the ability of any pool participant from proving that a greater amount is owed from Cipolla or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any pool participant that exist under state or common law.

100. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each pool participant of Cipolla who suffered a loss is explicitly made an intended third-party beneficiary of this Consent Order and may seek to enforce obedience of this Consent Order to obtain satisfaction of any portion of the restitution that has not been paid by Cipolla to ensure continued compliance with any provision of this Consent Order and to hold Cipolla in contempt for any violations of any provision of this Consent Order.

101. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Cipolla's Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

A. Provisions Related to Monetary Sanctions

102. Partial Satisfaction: Acceptance by the CFTC or the Monitor of any partial payment of Cipolla's Restitution Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Consent Order, or a waiver of the CFTC's right to seek to compel payment of any remaining balance.

B. Cooperation

103. Cipolla shall cooperate fully and expeditiously with the CFTC, including the CFTC's Division of Enforcement, in this action, and in any current or future CFTC investigation or action related thereto. Cipolla shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.

VI. MISCELLANEOUS PROVISIONS

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

Notice to CFTC:

Richard Glaser, Deputy Director
Division of Enforcement
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Notice to Cipolla:

Leonard J. Cipolla, Register Number 93766-083
FCI Petersburg Low
1100 River Road
Hopewell, VA 23860

All such notices to the CFTC shall reference the name and docket number of this action.

105. Change of Address/Phone: Until such time as Cipolla satisfies in full his Restitution Obligation as set forth in this Consent Order, Cipolla shall provide written notice to the CFTC by certified mail of any change to his telephone number and mailing address within ten calendar days of the change.

106. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

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

108. Waiver: The failure of any party to this Consent Order or of any client at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party or client at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

109. Waiver of Service, and Acknowledgement: Cipolla waives service of this Consent Order and agrees that entry of this Consent Order by the Court and filing with the Clerk of the Court will constitute notice to the Cipolla of its terms and conditions.

110. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all other purposes related to this action, including any motion by Cipolla to modify or for relief from the terms of this Consent Order.

111. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon Cipolla, upon any person under his authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Cipolla.

112. Counterparts and Facsimile Execution: This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

113. Contempt: Cipolla understands that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings he may not challenge the validity of this Consent Order.

114. Agreements and Undertakings: Cipolla shall comply with all of the undertakings and agreements set forth in this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this *Consent Order for Permanent Injunction, Restitution and Ancillary Equitable Relief Against Defendant Leonard J. Cipolla* forthwith and without further notice.

IT IS SO ORDERED on this 10 day of May, 2020.

John A. Gibney, Jr. */s/ JAG*
JOHN A. GIBNEY, Jr. District Judge
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:

Leonard J. Cipolla
Leonard J. Cipolla
FCI Petersburg/Low
1100 River Road
Hopewell, VA 23860

James A. Garcia
James A. Garcia
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581
(202) 418-5362
jgarcia@cftc.gov

Dated: 3/01/2021

Dated: 05/05/2021

Exhibit A

ECF No. 9

United States v. Cipolla, Case No. 3:19-cr-126-JAG

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA

v.

LEONARD J. CIPOLLA,

Defendant.

Case No. 3:19CR126-JAG

STATEMENT OF FACTS

The parties stipulate that allegations contained in the Criminal Information and the following facts are true and correct, and that had this matter gone to trial, the United States would have proven each of them beyond a reasonable doubt.

Count One: Mail Fraud

1. The defendant, Leonard J. Cipolla owned and operated Tate Street Trading, Inc., later renamed Tate Street Capital, Inc. (collectively "Tate Street"), based in Chesterfield, Virginia.
2. The Commodity Futures Trading Commission ("CFTC") was an agency of the United States Government with oversight of the entire commodity futures industry.
3. Regulatory responsibilities of the CFTC include, but are not limited to, the regulation of commodity pools, which may engage in transactions involving commodity futures and commodity options.
4. A commodity pool is an entity in which multiple individuals or entities contribute funds in order to trade futures or futures options as a group. A commodity pool is intended to enable the investors to make investments as a group that they might not be able to or want to make

individually, and to minimize the risks to individual investors by enabling them to invest in a broader range of investment opportunities.

5. A commodity pool operator is a person engaged in a business in the nature of an investment trust or similar form of enterprise and who solicits, accepts, or receives funds from others for the purpose of trading in commodity futures contracts. 7 U.S.C. § 1a(5). Typically, the funds received from investors by a commodity pool operator are combined in commodity pools and used to trade in commodity futures contracts or commodity options.

6. Commodity pool operators are required to be registered with the CFTC unless they qualify for an exception under the Commodity Exchange Act and/or CFTC regulations.

7. Trading of commodity futures and options usually takes place in trading accounts held at a futures commission merchant registered with the CFTC. A futures commission merchant is an individual or entity, similar to a brokerage house, which solicits or accepts orders to buy or sell commodity futures or options in accordance with the rules of an exchange.

8. Between in or about 2009 through in or about March 2019, in the Eastern District of Virginia and elsewhere, the defendant, LEONARD J. CIPOLLA, devised a scheme and artifice to defraud and for obtaining money and property by means of materially false and fraudulent pretenses, representations and promises, and attempting to do so, did knowingly place and caused to be placed in any post office or authorized depository for mail matter, any matter and thing whatever to be sent and delivered by the Postal Service; deposit and caused to be deposited any matter and thing whatever to be sent and delivered by any private and commercial interstate carrier; and caused to be delivered by mail and such carrier any matter and whatever according to the direction thereon.

9. CIPOLLA solicited individuals to invest money with him through his company

Tate Street Trading. In doing so, CIPOLLA made and caused to be made material misrepresentations and omissions to induce these individuals to invest money. The specific misrepresentations CIPOLLA made to investors varied over time, but included the following statements:

- a. CIPOLLA told investors that their money would be used to trade in commodity futures contracts and commodity options.
- b. CIPOLLA represented that he was an experienced trader with a history of profitable trading performance.
- c. CIPOLLA represented that Tate Street Trading was qualified to manage tax-deferred retirement accounts, and that investors' tax-deferred retirement accounts in fact were rolled into individual tax-deferred retirement accounts managed by Tate Street Trading.
- d. CIPOLLA represented that he made money on profits generated from his trading, and did not inform individuals that he also used money from the principal they invested with him.
- e. CIPOLLA did not inform investors that their money would be used for his own personal expenses, and to repay earlier investors.

10. CIPOLLA signed promissory notes with many investors that promised a specific rate of return. CIPOLLA also represented that investors could withdraw their money with 30 to 60 days' notice.

11. CIPOLLA provided many investors with account statements purporting to show that the individual's principal was intact, and growing at the promised rate of return.

12. In fact, CIPOLLA only transferred a portion of the money he collected from

investors to futures commission merchants for the purpose of pooling the money to trade commodity futures contracts and commodity options. Each time CIPOLLA opened a trading account at a futures commission merchant, CIPOLLA represented that he was not registered as a broker or a financial advisor, and he falsely represented that he did not solicit individuals for investment purposes, and that none of the funds he traded were pooled on behalf of other individuals. Ultimately, CIPOLLA lost nearly all the money he used to trade commodity futures contracts and commodity options.

13. CIPOLLA used the majority of the money he solicited from individuals for unauthorized purposes, including paying his own personal expenses and repaying earlier investors.

14. In furtherance of this scheme to defraud, CIPOLLA caused mailings through the United States mail and private mail carriers, including mailings of investor funds. Many of these mailings came to addresses within the Eastern District of Virginia. For example, on or about March 22, 2017, CIPOLLA knowingly caused to be delivered by mail and any private and commercial interstate carrier, to CIPOLLA's business address at 4201 Cheyenne Road, Richmond, a mailing containing a TD Ameritrade check in the amount of \$317,276.23, which funds constituted the transfer of a Tate Street investor's Individual Retirement Account ("IRA") from TD Ameritrade to what CIPOLLA had led the investor, E.M., to believe would be a tax-deferred retirement account managed by Tate Street.

15. As a result of this scheme to defraud, CIPOLLA fraudulently obtained millions of dollars from more than 30 investors.

Count Two: Unregistered Commodity Pool Operator

16. From in or about 2009 through in or about March 2019, in the Eastern District of Virginia and elsewhere, LEONARD J. CIPOLLA knowingly, willfully, and unlawfully used, and

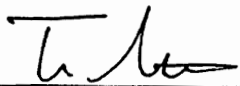
caused to be used, the mails and other means of interstate commerce to conduct business as a commodity pool operator. During this period, CIPOLLA was not registered as a commodity pool operator with the Commodity Futures Trading Commission and was not exempt by relevant statute or regulation from being so registered.

17. The actions taken by the defendant, as described above in Counts One and Two, were taken willfully and knowingly. The defendant did not take those actions by accident, mistake, or with the belief that they did not violate the law.

18. The preceding only includes those facts necessary to establish the defendant's guilt as to the offense to which he is entering a guilty plea. It does not necessarily reference all information known to the government or the defendant about the criminal conduct at issue.

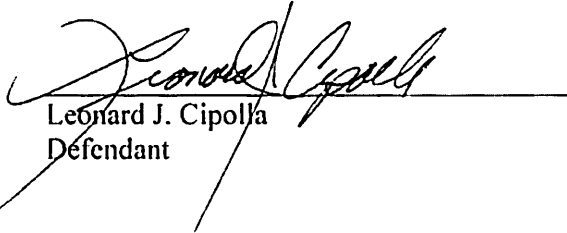
Respectfully submitted,

G. ZACHARY TERWILLIGER
UNITED STATES ATTORNEY

By: 

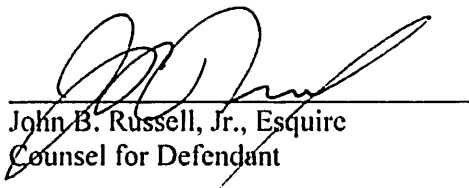
Katherine Lee Martin
Thomas A. Garnett
Assistant United States Attorneys

After consulting with my attorney and pursuant to the plea agreement entered into this day between myself and the United States, I stipulate that the above Statement of Facts is true and accurate, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.



Leonard J. Cipolla
Defendant

I am Leonard J. Cipolla's attorney. I have carefully reviewed the above Statement of Facts with him. To my knowledge, his decision to stipulate to these facts is an informed and voluntary one.



John B. Russell, Jr., Esquire
Counsel for Defendant