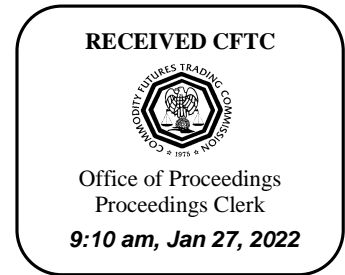


UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION



_____))
In the Matter of:))
))
Dennis K. Thomas and John J. Bartoletta,))
))
Respondents.))
_____))

CFTC Docket No. 22- 10

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

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that beginning no later than August 2015 and continuing through at least March 2017 (the “Relevant Period”), Respondent Dennis K. Thomas violated Sections 4k(2) and 4n(4) of the Act, 7 U.S.C. §§ 6k(2) and 6n(4) and Commission Regulations (“Regulations”) 4.21 and 4.22, 17 C.F.R. §§ 4.21, 4.22 (2020), and Respondent John J. Bartoletta violated Sections 4m(1) and 4k(2) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6m(1) and 6k(2). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether any order should be issued imposing remedial sanctions.

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

¹ Respondents consent to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agree that it shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondents do not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondents do not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

II. FINDINGS

The Commission finds the following:

A. Summary

During the Relevant Period, Respondents operated and solicited funds for a commodity pool operated through a now-defunct Florida-registered corporation called the Capital Trading Advisory Group LLC (“CTAG”), referred to herein as the “CTAG pool.” Thomas was the sole owner of CTAG and acted as an unregistered AP by soliciting and collecting funds from prospective pool participants for the CTAG pool, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2). Thomas also served CTAG in a principal capacity, operated the CTAG pool under an invalid claim of exemption from certain pool requirements under Regulation 4.7, 17 C.F.R. § 4.7 (2020), and failed to provide required pool disclosure statements and reports, in violation of Section 4n(4) of the Act, 7 U.S.C. § 6n(4), and Regulations 4.21 and 4.22, 17 C.F.R. §§ 4.21, 4.22 (2020).

Bartoletta directed trading in the custodial account holding CTAG pool participant funds while not registered as a commodity trading advisor (“CTA”), despite holding himself out as a CTA and furnishing commodity trading advice to more than fifteen CTAG pool participants, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1). Bartoletta also acted as an unregistered Associated Person (“AP”) of CTAG, a formerly registered commodity pool operator (“CPO”) and CTA, by soliciting and collecting funds from prospective pool participants for the CTAG pool in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

B. Respondents and Relevant Entity

John J. Bartoletta is a resident of Florida. Prior to May 2012, Bartoletta was registered with the Commission in various capacities. Bartoletta was not registered with the Commission in any capacity during the Relevant Period.

Dennis K. Thomas is a resident of Florida. During the Relevant Period, Thomas was listed with the National Futures Association (“NFA”) as a principal of CTAG, but was not registered with the Commission in any capacity during the Relevant Period or at any other time.

Capital Trading Advisory Group LLC, until at least March 30, 2018, maintained a business address in Seminole, Florida. It was registered as a CPO and CTA during the Relevant Period, but had claimed an exemption for the CTAG pool from certain CPO requirements pursuant to Regulation 4.7, 17 C.F.R. § 4.7 (2020). CTAG was voluntarily dissolved in a filing with the Florida Secretary of State on March 30, 2018, and its CPO and CTA registrations were withdrawn on February 22, 2019.

C. Facts

During the Relevant Period, Respondents and persons acting under their supervision and direction solicited, accepted, and/or received funds from at least 35 individual participants in the CTAG pool, a commodity pool trading commodity futures, options, and/or other products within the jurisdiction of the CFTC. Neither Thomas nor Bartoletta was registered with the Commission

as CPOs for the CTAG pool, or as APs of CTAG, which was registered as a CPO and CTA until February 22, 2019. Thomas was listed with NFA as a Principal of CTAG. During the Relevant Period, Thomas was the controlling person of CTAG and personnel working on behalf of the CTAG pool pursuant to Section 13(b) of the Act, 7 U.S.C § 13c(b). For example, Thomas was solely responsible for the registration applications and documents submitted on behalf of CTAG, was the sole signatory on CTAG's bank accounts, including the account that held CTAG pool participant funds, and opened the discretionary futures trading account used to trade those pooled investment funds.

Respondents and/or persons acting under their supervision solicited on behalf of the CTAG, pool participants, located in Florida, New Jersey, and throughout the United States via phone, email and in-person meetings. At Respondents' direction, pool participant funds were deposited into a discretionary futures trading account in the name of CTAG, not the CTAG pool, and commingled with funds belonging to other CTAG customers, as well as funds belonging to other entities operated by Respondents. In the account opening paperwork for the discretionary futures trading account, Thomas represented that CTAG had a "4.7 exemption" and identified only himself and another employee as the authorized traders for the account, despite the fact that Bartoletta and others under Bartoletta's supervision actually traded the account. Bartoletta developed the investment strategy for the CTAG pool, and directed trading in the aforementioned discretionary futures trading account. Bartoletta directly and/or indirectly advised at least 35 CTAG pool participants as to the value of or advisability of trading commodity futures.

Although the CTAG pool did not yield profits for pool participants, Respondents were compensated in the form of significant commission payments paid to them through various registered entities they owned and/or controlled, including the registered Introducing Broker on the CTAG trading account.

CTAG also purported to claim an exemption from certain CPO requirements under Regulation 4.7 for the CTAG pool. Despite having cited such an exemption in various paperwork, no notice of claim for exemption for the CTAG pool was filed with NFA as required pursuant to Regulation 4.7(d). CTAG was not eligible to claim such an exemption for the CTAG pool because its participants were not limited to Qualified Eligible Persons ("QEPs") or otherwise covered pursuant to the exemptions set forth in Regulation 4.7. In addition, the CTAG pool did not comply with requirements related to pool disclosures and reports, as set forth in Regulations 4.21 and 4.22. Specifically, pursuant to Regulation 4.21, pool participants were required to receive a pool Disclosure Document by no later than the time that they received a subscription agreement for the pool in the form prescribed therein. And pursuant to Regulation 4.22, pool participants were required to receive both an Annual Report and a monthly Account Statement in the form of a Statement of Operations and Statement of Changes in Net Assets, as prescribed therein. CTAG pool participants did not receive any such required disclosures and reports, nor did they regularly receive monthly account statements, during the Relevant Period.

By March 2017, the majority of CTAG pool participants had withdrawn or transferred their remaining funds from the CTAG pool and Respondents were no longer soliciting potential participants for the CTAG pool. Thomas withdrew his listing as a principal of CTAG on March 29, 2018, and CTAG's CPO and CTA registrations were withdrawn on February 22, 2019.

III. LEGAL DISCUSSION

The Act's registration requirements for commodity professionals are the cornerstone of the regulatory framework enacted by Congress to protect the public. "Registration is the kingpin in . . . [the Commission's] statutory machinery, giving the Commission the information about participants in commodity trading which it so vitally requires to carry out its other statutory functions of monitoring and enforcing the Act." *Flaxman v. CFTC*, 697 F.2d 782, 787 (7th Cir. 1983) (quoting *CFTC v. British Am. Commodity Options Corp.*, 560 F.2d 135, 139-40 (2d Cir. 1977)). Failure to register with the Commission is a serious offense, and not a mere technical violation of the Act. See *British Am. Commodity Options Corp.*, 560 F.2d at 139-40.

A. Thomas and Bartoletta Violated Section 4k(2) of the Act

Regulation 1.3, 17 C.F.R. § 1.3 (2020), defines as AP of a CPO as "a partner, officer, employee, consultant, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged."

Section 4k(2) of the Act, 7 U.S.C. § 6k(2), states, in relevant part and with certain specified exceptions and exemptions not applicable here, that:

It shall be unlawful for any person to be associated with a commodity pool operator as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this chapter as an associated person of such commodity pool operator and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked.

During the Relevant Period, Thomas and Bartoletta both acted as APs of a CPO, namely CTAG, when they solicited funds, securities, or property for participation in the CTAG pool, and/or supervised others engaged in such conduct. As such, Bartoletta and Thomas were both required to be registered as APs of CTAG, and violated the Section 4k(2) of the Act by not being so registered.

B. Thomas Violated Section 4n(4) of the Act and Regulations 4.21 and 4.22

Section 4n(4) of the Act, 7 U.S.C. § 6n(4), states that "every commodity pool operator shall regularly furnish statements of account to each participant in his operations," and further directs that "[s]uch statements shall be in such form and manner as may be prescribed by the Commission and shall include complete information as to the current status of all trading accounts in which such participant has an interest." In furtherance of this provision of the Act, Part 4 of the Regulations sets forth various disclosure, reporting, and recordkeeping requirements applicable to CPOs and CTAs, subject to certain exclusions and exemptions set forth therein.

Regulations 4.21 and 4.22, 17 C.F.R. §§ 4.21, 4.22 (2020), impose certain reporting and regulatory obligations on CPOs that are “registered or are required to be registered under the Act.” In his capacity as principal and controlling person of CTAG, Thomas attempted to operate the CTAG pool under an exemption from certain CPO requirements pursuant to Regulation 4.7, 17 C.F.R. § 4.7 (2020), which provides relief from specific compliance obligations for CPOs with respect to pools offered solely to QEPs. This includes relief from certain reporting and recordkeeping requirements otherwise applicable to CPOs and their pools and set forth in Part 4 of the Regulations. Despite having listed such a “4.7 exemption” in various paperwork, Thomas never filed a notice of claim for exemption for the CTAG pool, as required by Regulation 4.7(d). Moreover, the CTAG pool was not eligible for such an exemption because its participants were not limited to QEPs, as defined in Regulation 4.7(a), and the CTAG pool was marketed to the public, in violation of the eligibility requirements set forth in Regulation 4.7(b)(1)(i).

Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2018), states that a controlling person of an entity is liable for the violations of that entity if the controlling person knowingly induced the violations, directly or indirectly, or did not act in good faith. “A fundamental purpose of Section 13c[(b)] is to allow the Commission to reach behind the corporate entity to the controlling individuals of the corporation and to impose liability for violations of the Act directly on such individuals as well as the corporation itself.” *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1334 (11th Cir. 2002) (quoting *JCC, Inc. v. CFTC*, 63 F.3d 1557, 1567 (11th Cir. 1995)). A controlling person “knowingly induced” the conduct if he “had actual or constructive knowledge of the core activities that make up the violation at issue and allowed them to continue.” *Id.*

To establish the control element, Plaintiff must prove by a preponderance of the evidence that the alleged controlling person had “general control over the operation of the entity principally liable,” and “possessed the power or ability to control the specific transaction or activity upon which the primary violation was predicated.” *Monieson v. CFTC*, 996 F.2d 852, 859 (7th Cir. 1993) (quoting *Donohoe v. Consol. Operating & Prod. Corp.*, 982 F.2d 1130, 1138 (7th Cir. 1992)). It is the existence of the “power” or ability to control the illegal transaction or activity “that matters, not whether he exercised it by actually participating in or benefitting from the illegal acts.” *Id.* at 860.

Thomas had both general control over the CTAG pool and personnel working on its behalf and specific control over the registration and disclosure and reporting requirements at issue here. He had the ability to make management and personnel decisions for CTAG, a formerly registered CPO and CTA, was the sole signatory on CTAG’s bank accounts, including the account that held CTAG pool participant funds, and opened the discretionary futures trading account used to trade commodity futures on behalf of the CTAG pool. Thomas also was solely responsible for the registration applications submitted to the Commission on behalf of CTAG. Moreover, Thomas had actual knowledge of CTAG’s violations at issue here, in that he “claimed” the CPO exemption in Regulation 4.7 for CTAG, despite knowing that the CTAG pool was not eligible for that relief, and consequently, was subject to the disclosure and reporting requirements applicable to non-exempt CPOs under Part 4 of the Regulations. Therefore, pursuant to Section 13(b) of the Act, Thomas, as a controlling person, knowingly induced the underlying violations and is liable for CTAG’s violations of Section 4n(4) of the Act and Regulations 4.21 and 4.22.

C. Bartoletta Violated Section 4m(l) of the Act

Section 1a(12)(A)(i) of the Act, 7 U.S.C. § 1a(12)(A)(i), defines a CTA, in relevant part, as a person who for “compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media as to the value of or advisability of trading in . . . any contract of sale of a commodity for future delivery, security futures product, or swap.”

Section 1a(11) of the Act, 7 U.S.C. § 1a(11), defines a CPO, in relevant 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, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including any . . . commodity for future delivery, security futures product, or swap.”

Section 4m(1) of the Act, 7 U.S.C. § 6m(1), states that “[i]t shall be unlawful for any commodity trading advisor or commodity pool operator, unless registered under this chapter, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as such commodity trading advisor or commodity pool operator,” except that “the provisions of this section shall not apply to any commodity trading advisor who, during the course of the preceding twelve months, has not furnished commodity trading advice to more than fifteen persons and who does not hold himself out generally to the public as a commodity trading advisor,” and other exclusions not relevant here.

During the Relevant Period, Bartoletta acted as a CTA because, for compensation or profit, he engaged in the business of advising others as to the value of or advisability of trading commodity futures contracts. Bartoletta was required to register as a CTA under Section 4m(1) of the Act because he made use of the mails or means or instrumentality of interstate commerce, such as emails and the telephone, in connection with his business as a CTA. In addition, Bartoletta was required to be registered because, during the course of the preceding twelve months, he furnished commodity trading advice to more than 15 persons and held himself out to the public as a CTA. Bartoletta received compensation in connection with his commodity futures trading advice and such advice was not solely incidental to his business. Thus, Bartoletta violated Section 4m(1) of the Act by acting as an unregistered CTA.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Thomas violated Sections 4k(2) and 4n(4) of the Act, 7 U.S.C. §§ 6k(2) and 4n(4), and Regulations 4.21 and 4.22, 17 C.F.R. §§ 4.21, 4.22 (2020), and Bartoletta violated Sections 4m(1) and 4k(2) of the Act, 7 U.S.C. §§ 6m(1) and 6k(2).

V. OFFER OF SETTLEMENT

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

- A. Acknowledge service of this Order;
- B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waive:
 - 1. The filing and service of a complaint and notice of hearing;
 - 2. A hearing;
 - 3. All post-hearing procedures;
 - 4. Judicial review by any court;
 - 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 - 6. Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2020), relating to, or arising from, this proceeding;
 - 7. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, 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 proceeding; and
 - 8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer; and
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
 - 1. Makes findings by the Commission that Thomas violated Sections 4k(2) and 4n(4) of the Act, 7 U.S.C. §§ 6k(2) and 4n(4), and Regulations 4.21 and 4.22, 17 C.F.R. §§ 4.21, 4.22 (2020), and Bartoletta violated Sections 4m(1) and 4k(2) of the Act, 7 U.S.C. §§ 6m(1) and 6k(2);
 - 2. Orders Thomas to cease and desist from violating Sections 4k(2) and 4n(4) of the Act and Regulations 4.21 and 4.22 (2020), and Bartoletta to cease and desist from violating Sections 4m(1) and 4k(2) of the Act;

3. Orders Respondents to pay, jointly and severally, a civil monetary penalty in the amount of two hundred and eighty thousand dollars (\$280,000), plus any post-judgment interest within ten days of the date of entry of this Order; and
4. Orders Respondents to comply with the conditions and undertakings consented to in Section VI of this Order.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Thomas shall cease and desist from violating Sections 4k(2) and 4n(4) of the Act, 7 U.S.C. §§ 6k(2) and 4n(4), and Regulations 4.21 and 4.22, 17 C.F.R. §§ 4.21, 4.22 (2020), and Bartoletta shall cease and desist from violating Sections 4m(1) and 4k(2) of the Act, 7 U.S.C. §§ 6m(1) and 6k(2).
- B. Respondents shall pay, jointly and severally, a Civil Monetary Penalty in the amount of two hundred and eighty thousand dollars (\$280,000) (“CMP Obligation”) within ten days of the date of entry of this Order. If the CMP Obligation is not paid in full within ten days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Respondents shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

CFTC
C/O ESC/AMK-326; RM 265
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondents shall contact Jamie Stovall or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying party and the name and docket number of this proceeding. Respondents shall simultaneously transmit copies of the cover letter and the form of payment to: (i) the Chief Financial Officer, Commodity Futures Trading Commission, Three

Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581; and (ii) Regional Counsel, Division of Enforcement, Commodity Futures Trading Commission, 525 West Monroe Street, Suite 1100, Chicago, Illinois 60661.

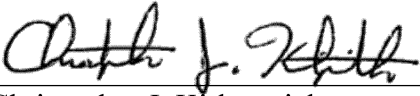
- C. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondents agree that neither they nor any of their successors and assigns, agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents shall comply with this agreement, and shall undertake all steps necessary to ensure that all of the agents and/or employees under their authority or control understand and comply with this agreement.
 2. Cooperation with the Commission: Respondents understand and agree that they shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement in this action, and any current or future Commission investigations or actions related thereto. Respondents shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.
 3. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of any partial payment of Respondents' CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
 4. Change of Address/Phone: Until such time as Respondents satisfy in full their CMP Obligation as set forth in this Order, Respondents shall provide written notice to the Commission by certified mail of any change to their telephone numbers and mailing addresses within ten calendar days of the change.
 5. Until such time as Respondents satisfy in full their CMP Obligation, upon the commencement by or against Respondents of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Respondents' debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership bankruptcy or other proceedings, shall be sent to the address below:

Secretary of the Commission
Legal Division
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington, DC 20581

* * *

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

By the Commission.



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

Dated: January 27, 2022