

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.: 1:22-CV-21520-GAYLES

**COMMODITY FUTURES TRADING
COMMISSION,**

Plaintiff,

v.

**DAMIAN CASTILLA, DCAST CAPITAL
INVESTMENTS LLC, and FIVE TRADERS
LLC,**

Defendants.

**ORDER FOR FINAL JUDGMENT BY DEFAULT, PERMANENT INJUNCTION, CIVIL
MONETARY PENALTIES, AND OTHER EQUITABLE RELIEF AGAINST
DEFENDANTS DCAST CAPITAL AND FIVE TRADERS**

THIS CAUSE came before the Court on Plaintiff's Motion for Entry of Default Judgment, Permanent Injunction, Civil Monetary Penalties, and Ancillary Statutory and Equitable Relief Against Defendants DCAST Capital Investment LLC and Five Traders LLC. [ECF No. 22]. The Court has reviewed the Motion and the record and is otherwise fully advised. For the reasons set forth below, the Motion is granted.

I. BACKGROUND

On May 17, 2022, Plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC") filed a Complaint charging Defendants Damian Castilla ("Castilla"), DCAST Capital Investments LLC ("DCAST"), and Five Traders LLC ("Five Traders") (collectively "Defendants"), with violating Sections 4b(a)(1)(A)-(C), 4k(2), 4m(1), 4o(1)(A) and (B), and 6(c)(2) of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 6b(a)(1)(A)-(C), 6k(2), 6m(1),

6o(1)(A), (B), 9(2), and Commission Regulations (“Regulation”) 4.20, 4.21, and 4.22, 17 C.F.R. §§ 4.20, 4.21, 4.22 (2021). [ECF No. 1]. On June 9, 2022, the Commission caused the summons and Complaint to be served upon DCAST and Five Traders by personally serving Castilla, the sole director and managing member of each entity, at a residence associated with him in Miami, Florida in accordance with Fed. R. Civ. P. 4(h)(1)(B). [ECF Nos. 6, 8].

Defendants DCAST and Five Traders failed to appear or answer the Complaint within the time permitted by Fed. R. Civ. P. 12(a)(1). Accordingly, the Commission filed motions for entry of a clerk’s default against Defendants DCAST and Five Traders on July 8, 2022, the Clerk of this Court entered a default against Defendants DCAST and Five Traders. On December 6, 2022, the Court entered a Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendant Damian Castilla. [ECF No. 20].

The Commission now moves this Court to grant final judgment by default against Defendants DCAST and Five Traders, order permanent injunctive relief, and impose a restitution obligation, disgorgement obligation, and civil monetary penalties. Based thereon, it is

ORDERED AND ADJUDGED that Plaintiff’s Motion for Final Judgment by Default, Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief against Defendants DCAST and Five Traders, [ECF No. 22], is **GRANTED**. Accordingly, the Court enters findings of fact, conclusions of law, and an Order of Final Judgment by Default for Permanent Injunction, Civil Monetary Penalties, and Other Statutory and Equitable Relief (“Order”) pursuant to Sections 6c of the Act, 7 U.S.C. § 13a-1 (2012), as set forth herein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. The Parties

1. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act and the Regulations.

2. Defendant DCAST Capital Investments LLC is a Florida entity with its last known place of business in Miami, Florida. DCAST previously claimed an exemption from registration with the Commission as a commodity trading advisor but withdrew its exemption in April 2015. It has never been registered with the Commission. Castilla is the sole owner and manager of DCAST.

3. Defendant Five Traders LLC is a Wyoming entity with its principal place of business in Miami, Florida. It has never been registered with the Commission. Castilla is the sole owner and manager of Five Traders.

4. Defendant Damian Castilla is a resident of Miami, Florida and is the sole owner and sole managing member of DCAST and Five Traders. Castilla applied for registration with the Commission as a commodity trading advisor in August 2013 but withdrew that application in November 2013.

2. Defendants Fraudulently Solicited Pool Participants for the Pools.

5. Between at least January 1, 2014, and continuing through May 17, 2022, the date of the filing of the Complaint (the “Relevant Period”), Castilla, DCAST, and Five Traders, engaged in a fraudulent scheme to solicit and misappropriate money given to them for the purpose of trading commodity futures contracts (“futures”) in commodity pools. DCAST and Five Traders were unregistered commodity pool operators (“CPOs”), and Castilla was an unregistered

associated person (“AP”) of both CPOs. During the Relevant Period, Defendants fraudulently solicited over \$3.4 million from over fifty individuals and entities (“pool participants”) to trade futures in commodity pools (the “Pools”) that did not exist.

6. During the Relevant Period, Defendants made material misrepresentations and omissions to pool participants and prospective pool participants about the Pools via telephone, in-person, video-conferencing, and electronic communications.

7. Defendants misrepresented a long history of professional trading—claiming, at times, that Castilla had nearly twenty years of successful professional trading experience, over five years of futures trading experience, and that trading futures had become Castilla’s full-time job. In reality, Defendants engaged in very little futures trading and the little trading Defendants engaged in was not profitable.

8. Defendants claimed that pool participants would have separate subaccounts connected to a master trading account that would automatically allocate trades that Defendants placed among Defendants’ accounts and the accounts of other pool participants. In reality, Defendants never established any subaccounts for any pool participants; rather Defendants provided pool participants with fake account statements showing fictitious trades and fictitious account balances that represented pool participants’ individualized shares of Defendants’ trading activity.

9. Once Defendants obtained money from pool participants, Defendants continued to misrepresent their futures trading as profitable by providing pool participants with fake trading account statements that showed regular and consistent profits in purported subaccounts. Defendants regularly used the false trading history reflected in these fake subaccount statements to solicit additional funds from pool participants as well as to solicit new pool participants.

10. Defendants often solicited friends and family of earlier pool participants that received fake account statements. For example, Defendants regularly claimed during oral solicitations that they typically earned profits between eight and ten percent per month for other pool participants. The claimed returns were often consistent with the fake account statements that Defendants provided to pool participants.

11. Additionally, Defendants made Ponzi payments to earlier pool participants, misrepresenting that the funds being returned were from profitable trading in futures accounts. Defendants used these Ponzi payments to further solicit friends and family members of pool participants. For example, during solicitations of new pool participants, Defendants pointed to the Ponzi payments as proof that Defendants ran legitimate, profitable commodity pools. In one instance, Defendants made Ponzi payments of over \$40,000 between July and October 2020 to Participant A. Shortly thereafter, Defendants obtained \$200,000 from two pool participants that were acquaintances of Participant A. Within three weeks of receiving this \$200,000 contribution, Defendants made additional Ponzi payments of over \$150,000 to other pool participants. Defendants' bank records show that on many occasions, Defendants would often dole out recently-received pool participant contributions to earlier pool participants within days of receipt.

12. The profits claimed were fake, and like all Ponzi schemes, Defendants became unable to repay all pool participants that requested redemptions. Defendants then resorted to even more false claims to pool participants who requested funds. In a number of instances, Defendants claimed that the money was available, but that Defendants' bank accounts had been frozen by various government agencies. To some pool participants, Defendants claimed that the Office of Foreign Assets Control had frozen Defendants' bank accounts due to issues with the funding source of another pool participant. To other pool participants, Defendants claimed that the

Commission froze Defendants' bank accounts during an investigation that Defendants were trying to resolve. Defendants' bank accounts were never frozen by a government agency; Defendants simply did not have the funds available to repay pool participants.

3. Defendants Misappropriated the Vast Majority of Pool Funds for Personal Expenses and to Make Ponzi Payments.

13. Of the over \$3.4 million that Defendants received from pool participants, Defendants paid over \$1.6 million in Ponzi payments to pool participants, claiming that the payments were the result of profitable trading.

14. Defendants misappropriated approximately \$1.8 million for personal expenses. Defendants regularly used corporate bank accounts for Castilla's personal expenses, which included car payments, home remodeling, lawn services, clothing, restaurants, and other withdrawals to Castilla's personal bank accounts.

15. Defendants deposited only a small portion of pool participants' funds for their intended purpose of trading futures—only \$105,000 of the over \$3.4 million received. Yet Defendants ultimately withdrew over \$50,000 from trading accounts for personal expenses and to make Ponzi payments.

16. The small amount of futures trading that Defendants engaged in was not profitable.

4. Defendants Provided False Account Statements Misrepresenting the Value of Client Accounts.

17. Defendants regularly provided pool participants with account statements that purportedly showed account values and trading activity for each pool participant's subaccount.

18. The account statements that Defendants provided showed regular and consistent growth in the value of the purported subaccounts for each pool participant. For example, in at

least one instance, Defendants issued false account statements that, over time, showed consistent profits for an account showing growth from \$50,000 to over \$5 million.

19. No accounts existed for any pool participants. Defendants never created subaccounts for pool participants and very little of pool participants' funds were ever used for trading futures.

20. During the Relevant Period, Defendants operated only three commodity interest trading accounts—two in the name of DCAST and one in the name of Five Traders. Despite receiving over \$3.4 million from pool participants for the purpose of trading commodity interests, Defendants deposited a mere \$105,000 to their trading accounts. Defendants lost about \$50,000 in trading, and ultimately withdrew over \$50,000 from the trading accounts—using the withdrawn funds for personal use or for Ponzi payments to pool participants.

5. Defendants' Misappropriation, Misrepresentations, and Omissions Were Intentional or Reckless and Operated as a Fraud on Pool Participants.

21. Defendants intentionally or recklessly made material misrepresentations. Each solicitation of a pool participant was done with the intended purpose to obtain more funds for personal use or to make Ponzi payments to placate earlier pool participants.

22. Defendants knew that their misrepresentations to pool participants were false and that the Pools did not exist.

23. Defendants never intended to trade pool participants' funds.

24. Less than four percent of pool participants' funds were deposited to futures trading accounts as promised and Defendants never used any pool participants' funds to establish subaccounts as promised.

25. Defendants issued false account statements to pool participants showing significant growth in pool participants' subaccounts that never existed.

26. On March 19, 2020, the Florida State Attorney's Office charged Castilla, in Miami-Dade County Case No. 13-2020-CF-004700-0001, with fraud and grand theft in connection with his fraudulent investment scheme. In communications with pool participants after being charged, Defendants misrepresented the nature of the allegations against Castilla. Defendants claimed to some pool participants that the charges were due to a misunderstanding with an investor while reassuring pool participants that the account values in the statements Defendants provided were accurate and that Defendants had the funds to repay participants.

27. After Castilla was charged criminally, Defendants continued soliciting new pool participants to keep the fraudulent scheme alive, using new funds to continue making Ponzi payments.

28. In total, Defendants solicited over \$700,000 from pool participants after Castilla was charged by the Florida State Attorney's Office. Defendants used these funds for personal expenses and for Ponzi payments.

6. Defendants Failed to Operate the Pools as Separate Legal Entities or Receive Pool Funds in the Pools' Names.

29. Defendants did not operate the Pools as separate legal entities. Defendants never created separate legal entities to receive contributions from pool participants. Although Defendants solicited money on behalf of the Pools, Defendants failed to open bank or futures trading accounts for the Pools. Rather, Defendants received pool funds in the name of DCAST or Five Traders, the CPOs, before the funds were then misappropriated for Castilla's personal use, misappropriated to make Ponzi payments, or transferred to Castilla's personal bank account.

30. By transferring pool funds to Castilla's personal bank accounts, Defendants also commingled pool funds with non-pool funds.

31. Defendants did not even treat the CPOs as separate entities, but instead commingled funds between DCAST and Five Traders treating both entities as interchangeable. For example, in some instances, Castilla used funds received by Five Traders to make Ponzi payments to pool participants that had previously provided funds to DCAST.

7. Castilla, DCAST, and Five Traders Failed to Register with the Commission.

32. During the Relevant Period, Defendants DCAST and Five Traders acted as CPOs in that they engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and they solicited, accepted, or received funds, securities, property, or capital contributions for the purpose of trading in commodity interests.

33. Defendants DCAST and Five Traders used emails, wire transfers, internet video messaging, text messaging, and other means or instrumentalities of interstate commerce to solicit, accept, and receive pool participants' funds for the purpose of trading futures.

34. During the Relevant Period, Defendants DCAST and Five Traders were never registered as CPOs and were not exempt or excluded from registration as CPOs.

35. During the Relevant Period, Defendant Castilla was associated with DCAST and Five Traders as a partner, officer, employee, consultant, or agent in a capacity that involved the solicitation of funds, securities, or property for a participation in a commodity pool.

36. During the Relevant Period, Defendant Castilla was never registered as an AP of DCAST or Five Traders.

8. Defendants Failed to Provide Pool Disclosures and Other Relevant Documents.

37. DCAST and Five Traders, while acting as the CPOs of the Pools, failed to provide pool disclosure documents and other documents required by Regulations 4.21 and 4.22, 17 C.F.R. §§ 4.21, 4.22 (2021), including but not limited to required cautionary statements, risk disclosures, fees and expenses incurred by the Pools, past performance disclosures, a statement that the CPO is required to provide to all pool participants with monthly or quarterly account statements, and an annual report containing financial statements certified by an independent public accountant.

9. Defendants Made False Statements of Material Fact to the Commission.

38. On June 21, 2021, the Commission's Division of Enforcement issued a subpoena to Defendants requiring, among other things, that Defendants produce "[d]ocuments sufficient to show the names, addresses, phone numbers, e-mail address, and any other contact information of all current and former customers or clients" of Defendants since 2012. On August 27, 2021, after retaining counsel, Defendants produced a document that included a list identifying five clients.

39. On August 31, 2021, Defendants, through counsel, confirmed that Defendants had completed their response to the subpoena's request for information concerning current or former customers or clients.

40. Defendants' response, identifying only five customers or clients, was a false statement of material fact because Defendants had at least 50 clients during the Relevant Period.

41. On September 28, 2021, Defendants submitted a supplemental list identifying additional customers or clients. This list, containing fourteen customers or clients, was also a false statement of material fact.

42. Defendants knew or reasonably should have known that their responses to the subpoena were false or misleading. In particular, Defendants failed to disclose over forty clients that provided, collectively, almost \$2 million. Defendants communicated with at least one undisclosed client as recently as October 2021 concerning repayment of funds—with Defendants making false statements to the pool participant that funds were available in trading accounts or bank accounts, but that Defendants were having temporary delays in accessing those funds.

B. Conclusions of Law

1. The Court Has Jurisdiction, and Venue Is Proper.

43. This Court possesses jurisdiction over this action pursuant to 28 U.S.C. § 1331 (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (providing that U.S. district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a), provides that the Commission may bring actions for injunctive relief or to enforce compliance with the Act or any rule, regulation, or order thereunder in the proper district court of the United States whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

44. Venue properly lies with this Court, pursuant to 7 U.S.C. § 13a-1(e), because Defendant Castilla resides in this jurisdiction and the acts and practices in violation of the Act occurred within this District.

2. Defendants Fraudulently Solicited, Misappropriated Funds, and Issued False Account Statements in Violation of Section 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. § 6b(a)(1)(A)-(C).

45. 7 U.S.C. § 6b(a)(1)(A)-(C) makes it unlawful:

(1) [F]or any person, in or 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 . . .

(A) to cheat or defraud or attempt to cheat or defraud the other person;

(B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; [or]

(C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for . . . the other person[.]

46. Defendants engaged in a fraud by, among other things: (1) misrepresenting that Defendants earned significant profits on behalf of pool participants by trading futures; (2) misrepresenting that the returns Defendants paid to pool participants were generated from futures trading profits; (3) misrepresenting that Castilla was an experienced and profitable trader; (4) misrepresenting that pool participants would have their own trading subaccounts with Defendants DCAST or Five Traders; (5) misappropriating pool participants' funds for Castilla's personal expenses; (6) issuing false account statements to pool participants; and (7) failing to disclose that Castilla had been charged by the Florida State Attorney's Office for fraud and grand theft in connection with his solicitation of certain pool participants.

47. By reason of the conduct described above, Defendants, in or in connection with any order to make, or the making of, commodity futures transactions made on or subject to the rules of a designated contract market knowingly or recklessly: (1) cheated or defrauded or attempted to

cheat or defraud pool participants; and/or (2) deceived or attempted to deceive pool participants by any means whatsoever.

48. By reason of the foregoing, Castilla, DCAST, and Five Traders violated 7 U.S.C. § 6b(a)(1)(A)-(C).

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

50. Each act of misrepresentation, omission of material fact, or false report or statement is a separate and distinct violation of 7 U.S.C. § 6b(a)(1)(A)-(C).

3. Defendants Committed Fraud by Commodity Pool Operators and Their Associated Person in Violation of Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A), (B).

51. Section 1a(10) of the Act, 7 U.S.C. § 1a(10), in part, defines a commodity pool as “any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests”

52. Section 1a(11)(A)(i) of the Act, 7 U.S.C. § 1a(11)(A)(i), defines a CPO, in relevant part, as any person:

[E]ngaged 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—

(I) commodity for future delivery, security futures product, or swap[.]

53. During the Relevant Period, DCAST and Five Traders engaged in a business, for compensation or profit, that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and in connection therewith, solicited, accepted, or received 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; therefore, DCAST and Five Traders acted as CPOs, as defined by 7 U.S.C. § 1a(11).

54. Under Section 4k(2) of the Act, 7 U.S.C. § 6k(2), in relevant part, a person is an AP of a CPO if that person is associated with a CPO 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[.]

55. During the Relevant Period, Castilla was a partner, officer, employee, consultant, or agent of DCAST and Five Traders (or occupied a similar status or performed similar functions), in a capacity that involved the solicitation of funds, securities, or property for participation in the Pools.

56. 7 U.S.C. § 6o(1)(A), (B) prohibits CPOs and APs of CPOs, whether registered with the CFTC or not, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, from employing devices, schemes, or artifices to defraud any client or participant or prospective client or participant, or engaging in transactions, practices, or courses of business which operate as a fraud or deceit upon any client or participant or prospective client or participant.

57. Defendants engaged in a fraud by, among other things: (1) misrepresenting that Defendants earned significant profits on behalf of pool participants by trading futures; (2) misrepresenting that the returns Defendants paid to pool participants were generated from futures trading profits; (3) misrepresenting that Castilla was an experienced and profitable trader; (4) misrepresenting that pool participants would have their own trading subaccounts with

Defendants DCAST or Five Traders; (5) misappropriating pool participants' funds for Castilla's personal expenses; (6) issuing false account statements to pool participants; and (7) failing to disclose that Castilla had been charged by the Florida State Attorney's Office for fraud and grand theft in connection with his solicitation of certain pool participants.

58. By reason of the conduct described above, Defendants, through use of the mails or any means of instrumentality of interstate commerce: (1) knowingly or recklessly employed devices, schemes or artifices to defraud pool participants and prospective pool participants; or (2) engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon pool participants or prospective pool participants, by misappropriating pool participant funds and making material misrepresentations to pool participants.

59. By reason of the foregoing, Defendants violated 7 U.S.C. § 6o(1)(A), (B).

60. Each act of misrepresentation, omission of material fact, or false report or statement is a separate and distinct violation of 7 U.S.C. § 6o(1)(A), (B).

4. DCAST and Five Traders Failed to Register as a Commodity Pool Operator in Violation of Section 4m(1) of the Act, 7 U.S.C. §6m(1).

61. Subject to certain exceptions not relevant here, 7 U.S.C. § 6m(1) states that it shall be "unlawful for any . . . [CPO], 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 . . . [CPO] . . ."

62. By reason of the foregoing, DCAST and Five Traders engaged in a business, for compensation or profit, that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and in connection therewith, solicited, accepted, or received 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; therefore, DCAST and Five Traders acted as a CPO, as defined by 7 U.S.C. § 1a(11).

63. DCAST and Five Traders, while using the mails or means of interstate commerce in connection with its business as a CPO, were not registered with the CFTC as a CPO.

64. By reason of the foregoing, DCAST and Five Traders acted as unregistered CPOs in violation of 7 U.S.C. § 6m(1).

65. Each instance that DCAST and Five Traders acted as a CPO but failed to register with the CFTC as such is a separate and distinct violation of 7 U.S.C. § 6m(1).

5. Castilla Failed to Register as an Associated Person of Commodity Pool Operators in Violation of Sections 4k(2) of the Act, 7 U.S.C. § 6k(2).

66. Subject to certain exceptions not relevant here, 7 U.S.C. § 6k(2) makes it “unlawful for any person to be associated with a [CPO] as a partner, officer, employee, consultant, or agent . . . in any capacity that involves . . . the solicitation of funds, securities, or property for a participant in a commodity pool[.]”

67. 7 U.S.C. § 6k(2) also makes it “unlawful for any commodity pool operator to permit [an unregistered AP] to become or remain associated with the [CPO] in such capacity if the [CPO] knew or should have known that such person was not so registered[.]”

68. During the Relevant Period, Castilla was associated with DCAST and Five Traders as a member, partner, officer, employee, consultant, agent, or in a similar capacity, and Castilla solicited funds for participation in the Pools.

69. Castilla was never registered with the CFTC as an AP of DCAST or Five Traders.

70. By reason of the foregoing, Castilla acted as an unregistered AP of DCAST and Five Traders, CPOs, in violation of 7 U.S.C. § 6(k)(2).

71. During the Relevant Period, DCAST and Five Traders knew that Castilla acted as an unregistered AP of DCAST and Five Traders, in violation of 7 U.S.C. § 6k(2).

72. Each instance that Castilla acted as an unregistered AP of DCAST and Five Traders but failed to register with the CFTC as such is a separate and distinct violation of 7 U.S.C. § 6k(2).

6. Defendants Failed to Operate a Pool as a Separate Entity, Failed to Accept Funds in the Name of the CPO, and Commingled Pool Property in Violation of Regulation 4.20, 17 C.F.R. § 4.20 (2021).

73. 17 C.F.R. § 4.20(a)(1) requires a CPO, whether registered or not, to operate its pool as a legal entity separate from that of the CPO.

74. 17 C.F.R. § 4.20(b) prohibits CPOs, whether registered or not, from receiving pool participants' funds in any name other than that of the pool.

75. 17 C.F.R. § 4.20(c) requires that a CPO may not commingle the property of any pool that it operates or that it intends to operate with the property of any other person.

76. During the Relevant Period, DCAST and Five Traders, while acting as CPOs for the Pools, failed to operate the Pools as a legal entity separate from themselves and from Castilla as an individual. Defendants received pool participants' funds in their own names rather than the name of a legally cognizable commodity pool. Defendants commingled pool participants' funds with Castilla's funds in Castilla's personal bank accounts.

77. By reason of the foregoing, DCAST and Five Traders violated of 17 C.F.R. § 4.20(a)(1), (b), and(c).

78. Each act of failing to operate the Pools as separate legal entities, receiving pool participants' funds in the name of DCAST or Five Traders rather than in the name of the Pools, and commingling pool funds with non-pool funds is a separate and distinct violation of 17 C.F.R. § 4.20.

7. Defendants Failed to Provide Pool Disclosures and Other Required Documents in Violation of Regulations 4.21 and 4.22, 17 C.F.R. §§ 4.21, 4.22 (2021).

79. 17 C.F.R. § 4.21, in relevant part, provides that:

[E]ach [CPO] registered or required to be registered under the Act must deliver or cause to be delivered to a prospective participant in a pool that it operates or intends to operate a Disclosure Document for the pool prepared in accordance with §§ 4.24 and 4.25 by no later than the time it delivers to the prospective participant a subscription agreement for the pool

80. During the Relevant Period, DCAST and Five Traders did not provide to prospective pool participants a Disclosure Document with the necessary disclosures in accordance with 17 C.F.R. §§ 4.24 and 4.25.

81. 17 C.F.R. § 4.22 requires, in relevant part, that CPOs (registered or required to be registered) provide periodic account statements to investors—presented and computed in accordance with generally accepted accounting principles—itemizing, among other things, the total amount of realized net gain or loss on commodity interest positions liquidated during the reporting period, the total amount of unrealized net gain or loss on commodity interest positions during the reporting period, and the total amount of net gain or loss from all other transactions in which the pool engaged during the reporting period.

82. During the Relevant Period, DCAST and Five Traders did not provide periodic account statements to pool participants that itemized the total amount of realized net gain or loss on commodity interest positions liquidated during the reporting period, the total amount of unrealized net gain or loss on commodity interest positions during the reporting period, and the total amount of net gain or loss from all other transactions in which the Pools engaged during the reporting period.

83. By reason of the foregoing, DCAST and Five Traders violated 17 C.F.R. §§ 4.21 and 4.22.

84. Each failure to furnish the required disclosure documents and account statements and reports to prospective pool participants and pool participants is a separate and distinct violation of 17 C.F.R. §§ 4.21 and 4.22.

8. Defendants Made False Statements to the Commission in Violation of Section 6(c)(2) of the Act, 7 U.S.C. § 9(2).

85. 7 U.S.C. § 9(2) provides that it “shall be unlawful for any person to make any false or misleading statement of a material fact to the Commission . . . if the person knew, or reasonably should have known, the statement to be false or misleading.”

86. By submitting false and misleading statements that Defendants knew or reasonably should have known were false, Defendants violated 7 U.S.C. § 9(2).

87. Each false statement of material fact to the Commission is a separate and distinct violation of 7 U.S.C. § 9(2).

9. DCAST and Five Traders are Liable for Castilla’s Violations Pursuant to 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2.

88. Castilla committed the acts, omissions, and failures described herein within the course and scope of his employment, agency, or office within DCAST and Five Traders. Therefore, DCAST and Five Traders are liable under 7 U.S.C. § 2(a)(1)(B) and 17 C.F.R. § 1.2 for Castilla’s acts, omissions, and failures in violation of the Act.

II. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

89. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, Defendants DCAST and Five Traders are permanently restrained, enjoined, and prohibited from directly or indirectly:

- a. Cheating or defrauding, or attempting to cheat or defraud, other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery that is made, or to be made, for or on behalf of, or with, any other person in violation of Section 4b(a)(1)(A) of the Act, 7 U.S.C. §§ 6b(a)(1)(A);
- b. Willfully making or causing to be made false statements or reports to another person in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery that is made, or to be made, for or on behalf of, or with, any other person in violation of 7 U.S.C. § 6b(a)(1)(B);
- c. Willfully deceiving or attempting to deceive other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery in violation of 7 U.S.C. § 6b(a)(1)(C).
- d. Employing any device, scheme, or artifice to defraud any client or participant or prospective client or participant, or engaging in any transaction, practice or course of business which operates as a fraud or deceit upon any client or participant or prospective participant in violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1);
and

- e. Making any false or misleading statement of material fact to the Commission in violation of Section 6(c)(2), 7 U.S.C. § 9(2).

90. Defendants DCAST and Five Traders are 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));
- b. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2021), for their own personal account or for any account in which they have a direct or indirect interest;
- c. Having any commodity interests traded on their 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 Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2021); and/or
- g. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2021)), 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)),

registered, exempted from registration or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9).

III. RESTITUTION, DISGORGEMENT, AND CIVIL MONETARY PENALTY

A. Restitution

91. Defendants DCAST and Five Traders shall pay, jointly and severally, restitution in the amount of two million, six hundred eighty-seven thousand, four hundred forty dollars (\$2,687,440) (“Restitution Obligation”), representing losses to persons proximately caused by such violations described above. Defendants DCAST and Five Traders shall receive a dollar-for-dollar credit against this Restitution Obligation to the extent that Castilla makes payment of any restitution in accordance with the restitution provisions contained in the Consent Order for Permanent Injunction, Restitution, and Civil Monetary Penalty and Other Equitable Relief.

92. If the Restitution Obligation is not paid immediately in full, post-judgment interest shall accrue on the unpaid portion of the Restitution 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.

93. To effect payment of the Restitution Obligation and the distribution of any restitution payments to Defendants’ customers/pool participants/clients, the Court appoints the National Futures Association (“NFA”) as Monitor (“Monitor”). The Monitor shall receive restitution payments from Defendants DCAST and Five Traders 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.

94. Defendants DCAST and Five Traders shall make Restitution Obligation payments, and any post-judgment interest payments, under this Order to the Monitor in the name “Defendant Castilla–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 the paying Defendant and the name and docket number of this proceeding. Defendants DCAST and Five Traders 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.

95. 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 Defendants’ customers/pool participants/clients identified by the Commission or may defer distribution until such time as the Monitor deems appropriate. In the event that the amount of Restitution Obligation payments to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a distribution to eligible customers/pool participants/clients is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission following the instructions for civil monetary penalty payments set forth below.

96. Defendants DCAST and Five Traders shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Defendants’ customers/pool participants/clients to whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any Restitution Obligation

payments. Defendants DCAST and Five Traders shall execute any documents necessary to release funds that they have in any repository, bank, investment, or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.

97. The Monitor shall provide the Commission at the beginning of each calendar year with a report detailing the disbursement of funds to Defendants' customers/pool participants/clients 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.

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

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

100. To the extent that any funds accrue to the U.S. Treasury for satisfaction of Defendants DCAST and Five Traders' Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth above.

B. Disgorgement

101. Defendants DCAST and Five Traders shall pay, jointly and severally, disgorgement in the amount of three million, three hundred fifty thousand dollars (\$3,350,000) ("Disgorgement Obligation"), representing the gains received in connection with such violations. Defendants DCAST and Five Traders shall receive a dollar-for-dollar credit against this Disgorgement Obligation to the extent that Castilla makes payment of any disgorgement in accordance with the disgorgement provisions contained in the Consent Order for Permanent Injunction, Restitution, and Civil Monetary Penalty and Other Equitable Relief. Further, for amounts paid in satisfaction of the Restitution Obligation under the terms of this Order, or by Castilla under the terms of the Consent Order, Defendants DCAST and Five Traders shall receive a dollar-for-dollar credit against their Disgorgement Obligation.

102. If the Disgorgement Obligation is not paid in full immediately, then post-judgment interest shall accrue on the unpaid portion of the Disgorgement 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.

103. Defendants DCAST and Five Traders shall pay the Disgorgement 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:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-amz-ar-cftc@faa.gov

If payment by electronic funds transfer is chosen, Defendants DCAST and Five Traders shall contact Tonia King or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendants DCAST and Five Traders shall accompany payment of the Disgorgement Obligation with a cover letter that identifies the paying Defendant and the name and docket number of this proceeding. Defendants DCAST and Five Traders 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.

C. Civil Monetary Penalty

104. Defendants DCAST and Five Traders shall pay, jointly and severally, a civil monetary penalty in the amount of ten million, fifty thousand dollars (\$10,050,000) (“CMP Obligation”), which represents three times the gains to Defendants from the violations of the Act and Regulations in accordance with 7 U.S.C. § 13a-1(d)(1)(A). If the CMP Obligation is not paid in full immediately, then post-judgment interest shall accrue on the unpaid portion of 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.

105. Defendants DCAST and Five Traders 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:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-amz-ar-cftc@faa.gov

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

D. Provisions Related to Monetary Sanctions

106. Partial Satisfaction: Acceptance by the Commission/CFTC or the Monitor of any partial payment of Defendants' Restitution Obligation, Disgorgement Obligation, or 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/CFTC's right to seek to compel payment of any remaining balance.

IV. MISCELLANEOUS PROVISIONS

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

Notice to Commission:

Charles Marvine
Deputy Director
2600 Grand Boulevard, Suite 210
Kansas City, MO 64108

Notice to Defendants DCAST and Five Traders:

To Co-Defendant Damian Castilla, at an address he provided to the Commission, or provides in the future pursuant to the terms of his Consent Order.

Notice to NFA:

Daniel Driscoll, Executive Vice President, COO
National Futures Association
300 S. Riverside Plaza, Suite 1800
Chicago, IL 60606-3447

All such notices to the Commission or the NFA shall reference the name and docket number of this action.

108. Change of Address/Phone: Until such time as Defendants DCAST and Five Traders satisfy in full the Restitution, Disgorgement, and CMP Obligations under this Order, Defendants DCAST and Five Traders shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten calendar days of the change.

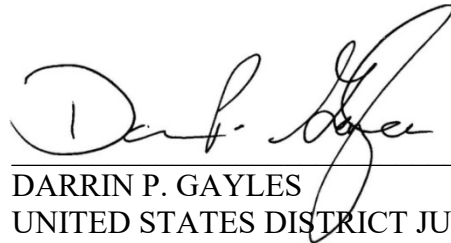
109. Invalidation: If any provision of this Order or if the application of any provision or circumstance is held invalid, then the remainder of this Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

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

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

There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this *Order for Final Judgment by Default* forthwith and without further notice.

DONE AND ORDERED in Chambers at Miami, Florida, this 6th day of April, 2023.



DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE