

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

COMMODITY FUTURES TRADING)	Civil Action No. 2:08-3297-CWH
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	
)	
CSA TRADING GROUP, INC., AND)	
MICHAEL DERRICK PENINGER,)	COMPLAINT FOR
INDIVIDUALLY AND D/B/A COOPER)	PERMANENT INJUNCTION,
RIVER GROUP,)	CIVIL PENALTIES AND OTHER
)	EQUITABLE RELIEF
Defendant,)	
)	
AMERICAN MIDDLE SCHOOL)	
ATHLETIC ASSOCIATION, INC., THE)	
BLOOMING VILLAGE FLORIST, INC.,)	
DANIEL ISLAND BUILDERS, LLC AND)	
PALMETTO STATE COMMODITIES,)	
INC.,)	
Relief Defendants.)	
_____)	

I. SUMMARY

1. From at least October 2002 through January 2007 (the “relevant period”), defendants CSA Trading Group, Inc. (“CSA”) and Michael Derrick Peninger (“Peninger”), doing business as the Cooper River Group and as an officer, employee or agent of CSA, fraudulently solicited and accepted more than \$1 million from at least 20 individuals to participate in purported commodity pools that were to trade commodity futures contracts (“commodity futures”). CSA and Peninger (collectively the “Defendants”) fraudulently solicited participation in the purported pools by, directly and through others: misrepresenting Peninger’s prior trading success and the performance of the purported pools, guaranteeing profitable returns, falsely claiming that a commodity futures trading system developed by Peninger virtually eliminated the risks of trading

commodity futures, falsely representing that participants' funds would be pooled and used for purposes of trading commodity futures, and failing to disclose the risks of trading commodity futures.

2. Contrary to their representations, Defendants engaged in little trading on behalf of the purported pools and instead misappropriated pool participants' funds to pay back pool participants in a manner akin to a "Ponzi scheme" and to pay for personal expenses and other business ventures.

3. Relief defendants American Middle School Athletic Association, Inc., The Blooming Village Florist, Inc., Daniel Island Builders LLC, and Palmetto State Commodities, Inc. (collectively, the "Relief Defendants") each received pool participants' funds to which they have no legitimate entitlement.

4. Defendants concealed their fraud by issuing account statements to certain participants reflecting profitable returns or providing oral assurances to participants that they were making money.

5. Defendants' fraudulent solicitations, false statements and omissions concerning the purported profits earned by each pool participant, and misappropriation of pool participants' funds violate Sections 4b(a)(2)(i) - (iii), and 4o(1) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 6b(a)(2)(i) - (iii) and 6o(1) (2006).

6. Peninger, doing business as Cooper River Group, and CSA each acted as Commodity Pool Operators ("CPOs") without being registered as required by the Act by soliciting and accepting funds from individuals for the purpose of pooling those funds and trading commodity futures on behalf of the purported pools, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2006).

7. In soliciting or causing to be solicited funds from individuals in connection with CSA's operation of a purported pool, Peninger acted as an Associated Person ("AP") of CSA without being registered as such in violation of Section 4k(2) of the Act, 7 U.S.C. § 4k(2). CSA knew or should have known that Peninger and others were acting as APs of CSA without being registered, and, accordingly, CSA violated Section 4k(2) of the Act, 7 U.S.C. § 4k(2). Likewise, Peninger, acting as a CPO and doing business as Cooper River Group, knew or should have known individuals were acting as APs of Peninger, doing business as Cooper River Group, without being registered as required by the Act and accordingly, Peninger further violated Section 4k(2) of the Act, 7 U.S.C. § 4k(2).

8. While acting as CPOs, Defendants failed to operate the pools as separate legal entities, failed to receive pool funds in the name of the purported pools, commingled pool participants' funds with the property of others, and failed to provide disclosure documents, account statements, and annual reports to pool participants in accordance with, and as required by regulation, in violation of Commission Regulations ("Regulations") 4.20, 4.21, and 4.22, 17 C.F.R. §§ 4.20, 4.21, and 4.22 (2008).

9. Because Peninger controlled CSA and either knowingly induced the violations alleged herein or failed to act in good faith, Peninger is also liable for the violations of CSA pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

10. Accordingly, the Commission brings this action to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act and Regulations. In addition, the Commission seeks civil monetary penalties, restitution of customer funds, disgorgement of Defendants' and Relief Defendants' ill-gotten gains, permanent

injunctions, including permanent trading bans, and other such relief as the Court may deem necessary or appropriate.

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

II. JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which provides that 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 promulgated thereunder, the Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

13. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), in that Defendants are found in, inhabit, or transact business in this District, and/or the acts and practices in violation of the Act and Regulations have occurred, are occurring, or are about to occur within this District.

III. PARTIES

14. Plaintiff **Commodity Futures Trading Commission** is an independent federal regulatory agency of the United States empowered to enforce the provisions of the Act, 7 U.S.C. §§ 1 *et seq.*, and the Regulations, 17 C.F.R. §§ 1.1. *et seq.* The Commission maintains its principal office at Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

15. Defendant **CSA Trading Group, Inc.**, formerly known as CSA Group, Inc., is a South Carolina corporation formed in May 2003 that purports to trade commodity futures. The name change from CSA Group, Inc. to CSA took place in June 2004. Neither CSA Group, Inc. nor CSA has ever been registered with the Commission.

16. Defendant **Michael Derrick Peninger** is a resident of South Carolina and at times did business as Cooper River Group. He served as president of CSA and Cooper River Group. From July 1989 through January 1993, Peninger was registered with the Commission as an AP of then-registered Futures Commission Merchant Dean Witter Reynolds, Inc. (currently Morgan Stanley DW, Inc.). From February through October 1996, Peninger was registered as an AP of Program Traders, Inc., which had been registered as an Introducing Broker ("IB"). From October 1996 through November 2002, Peninger did business as registered IB Palmetto State Commodities, and was registered as an AP with that firm. Peninger ceased to be registered in any capacity as of November 24, 2002. Peninger was never registered in any capacity relating to either Cooper River Group or CSA.

17. Relief Defendant **American Middle School Athletic Association, Inc.** ("AMSAA") is a South Carolina corporation formed in 2004 for the purpose of sponsoring basketball tournaments. Peninger served as the registered agent of AMSAA. Peninger was a shareholder of AMSAA, which operated from the same office as CSA and Cooper River Group.

18. Relief Defendant **The Blooming Village Florist, Inc.** ("Blooming Village Florist") is a South Carolina corporation formed in 2003 for the purpose of operating

flower shops. Peninger served as the registered agent of Blooming Village Florist. Teresa Ann Dodds and Peninger served as president and vice president, respectively.

19. Relief Defendant **Daniel Island Builders LLC** (“DIB”) is a South Carolina corporation formed in 2005 for the purpose of purchasing, selling and developing real estate. Peninger served as president of DIB.

20. Relief Defendant **Palmetto State Commodities, Inc.** (“PSC”) was a corporation formed in South Carolina in 1995. Peninger served as the registered agent and vice president of PSC. Although the corporation was dissolved in 1997, Peninger continued to do business as PSC. Peninger, doing business as registered IB PSC, was registered as an AP of that firm from 1996 to 2002.

IV.FACTS

A. Peninger’s Formation and Operation of Cooper River Group and CSA

21. Commencing in at least October 2002, Peninger, with the assistance of another individual, Billy Calvin Lee (“Lee”), began doing business as Cooper River Group for the purported purpose of operating commodity pools that were to trade commodity futures or to otherwise engage in commodity futures trading on behalf of others. Peninger was the president of Cooper River Group.

22. In the fall of 2002, Peninger hired Michael Ledoyen III (“Ledoyen”) as a trader.

23. In May 2003, Peninger formed and incorporated CSA with Lee and Ledoyen, also for the purported purpose of operating commodity pools that were to trade commodity futures or to otherwise engage in commodity futures trading on behalf of others. Peninger was the president of CSA.

24. As president of CSA and Cooper River Group, Peninger controlled both entities' day-to-day operations, including, but not limited to: directing and approving the solicitations of prospective participants, hiring and firing of new employees, and directing and supervising the activities of Lee and Ledoyen, including the handling of pool participants' funds.

25. Peninger, doing business as Cooper River Group, and CSA directly and through others, including Lee and Ledoyen, solicited individuals to trade commodity futures and participate in commodity pools that were to trade commodity futures.

26. By soliciting or supervising the soliciting of funds for participation in a commodity pool, Peninger, Lee and Ledoyen acted as APs of CSA and Cooper River Group.

27. Defendants never organized pools for trading commodity futures as separate legal entities from CSA or Cooper River Group.

28. From at least October 2002, Peninger, doing business as Cooper River Group, directly and through others, solicited individuals to participate in a commodity pool for the purpose of trading commodity futures.

29. Beginning in 2003, CSA, through Peninger and others, solicited individuals to participate in a commodity pool for the purpose of trading futures contracts.

30. In most instances, CSA and Peninger, doing business as Cooper River Group, issued letters to participants that stated "[p]lease accept this letter agreement from our firm regarding your desire to participate with us in the trading of futures contracts" for a period of typically 12 to 36 months.

31. Under these letter agreements, CSA or Cooper River Group promised to repay funds placed by participants and guaranteed "interest" of at least 1% per month.

32. Some of the letter agreements also promised additional payments based on trading performance.

33. During the relevant period, Defendants solicited in excess of \$1 million from at least 20 individuals.

B. Defendants Fraudulently Solicited Individuals

34. To induce participation, Peninger described himself as a successful trader and touted the performance of a trading system he purportedly developed to trade commodity futures, including Treasury note futures contracts and the S&P 500 futures contracts. Peninger characterized his trading results in glowing terms. Lee and Ledoyen repeated these claims to others solicited to place funds with CSA or Cooper River Group.

35. Defendants, directly and through others, falsely told prospective participants that their funds would be pooled with the funds of others for purposes of trading commodity futures.

36. Defendants, directly and through others, guaranteed profitable returns, claimed that any trading losses would be guaranteed by trust funds held by Peninger, and represented that Peninger's trading system virtually eliminated the risks associated with commodity futures trading. Lee and Ledoyen repeated these claims to others solicited to place funds with CSA or Cooper River Group.

37. Defendants, directly and through others, failed to disclose the risks of trading commodity futures.

38. Thus, Defendants made material misrepresentations and omissions about the operation and performance of the pools.

39. Defendants knew or were reckless in not knowing that these representations and omissions were false or misleading.

40. Defendants routinely failed to provide participants with required disclosure documents. Defendants also failed to receive signed acknowledgements from prospective participants that they had received required disclosure documents for the respective pools prior to accepting or receiving funds from the prospective participants.

41. Defendants failed to provide required, regular written account statements and did not provide required annual reports concerning the performance of the pools. Instead, Peninger, directly and through others, routinely provided oral assurances that trading was going well and, on occasion, provided cursory account statements that did not provide the information required by the Regulations and reflected profitable returns.

C. Defendants Misappropriated Nearly All of the Participants' Funds

42. The vast majority of pool participants' funds placed with CSA and/or Cooper River Group were never used for trading commodity futures.

43. Defendants opened only one commodity futures trading account in the name of CSA at a registered futures commission merchant. That trading account was opened as a corporate proprietary account, not a pool account, and funded with only \$10,000, most of which was lost in trading during the period October 2005 through February 2006.

44. Defendants never opened a commodity futures trading account in the name of Cooper River Group or in the name of any commodity pools managed by either Cooper River Group, Peninger or CSA.

45. Instead of trading commodity futures on behalf of the purported pools and the participants, Defendants misappropriated participants' funds to pay for personal expenses, to pay off other participants, and to fund various other business ventures.

46. Relief Defendants, AMSAA, Blooming Village Florist, DIB and PSC, each received pool participants' funds. The Relief Defendants provided no legitimate services to the purported pools, CSA or Cooper River Group and otherwise have no legitimate entitlement to the pool participants' funds.

47. Defendants commingled pool participants' funds with funds from the Relief Defendants AMSAA, Blooming Village Florist, DIB and PSC.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

COUNT ONE

FRAUD IN THE SALE OF COMMODITY FUTURES

Violations of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. § 6b(a)(2)(i)-(iii)

48. The allegations set forth in paragraphs 1 through 47 are realleged and incorporated herein by reference.

49. Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2), makes it unlawful

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (A) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (B) determining the price basis of any transaction in interstate commerce in such commodity, or (C) delivering any such commodity sold, shipped, or received in interstate

commerce for the fulfillment thereof—(i) to cheat or defraud or attempt to cheat or defraud such other person; (ii) willfully to make or cause to be made to such other person any false report or statement thereof, or willfully enter or cause to be entered for such person any false record thereof; (iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person.

50. Defendants, directly and through others, in or in connection with the orders to make, or the making of, contracts of sale of commodities for future delivery, made or to be made, for or on behalf of any other persons, where such contracts for future delivery were or could be used for the purposes set forth in Section 4b(a)(2) of the Act, 7 U.S.C. § 6b(a)(2), have cheated or defrauded or attempted to cheat or defraud pool participants or prospective pool participants, and willfully deceived or attempted to deceive pool participants or prospective pool participants by, among other things, knowingly (1) making fraudulent representations concerning Peninger's trading performance, (2) falsely claiming that Peninger's trading system eliminated the risks of trading commodity futures and otherwise failing to disclose those risks, (3) guaranteeing profits and interest in connection with commodity futures trading, (4) issuing false periodic statements to pool participants, (5) making fraudulent representations that participants' funds would be invested in commodity futures when such funds were not for the most part, in fact, invested in commodity futures and instead were misappropriated by Defendants, (6) failing to disclose the risks of trading commodity futures, and (7) misappropriating pool participants' funds, all in violation of Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii).

51. Further, Defendants violated Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b(a)(2)(ii), by issuing false periodic statements to various pool participants.

52. Peninger controlled CSA and Cooper River Group, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, CSA and Cooper River Groups' violations as alleged herein. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Peninger is liable for CSA's and Cooper River Group's violations of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii).

53. The foregoing acts, misrepresentations, omissions, misappropriations and failures of Peninger and others occurred within the scope of their employment, office or agency with CSA or with Peninger, doing business as Cooper River Group; therefore, CSA and Peninger, doing business as Cooper River Group, are liable for these acts in violation of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

54. Each misappropriation, issuance of a false report, misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii).

COUNT TWO
FRAUD BY COMMODITY POOL OPERATORS AND
ASSOCIATED PERSONS OF COMMODITY POOL OPERATORS

Violations of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B)

55. The allegations set forth in paragraphs 1 through 54 are realleged and incorporated herein by reference.

56. As defined in Section 1a(5) of the Act, 7 U.S.C. § 1a(5), a CPO is

any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property . . . for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

57. As defined in Regulation 1.3(aa)(3), 17 C.F.R. § 1.3(aa)(3), an AP of a CPO is a natural person who is associated with 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; ...

58. Section 4o(1) of the Act, 7 U.S.C. § 6o(1), prohibits CPOs and APs of CPOs from using the mails or any other means of interstate commerce to:

(A) employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or

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

59. Since at least October 2002, CSA and Peninger, doing business as Cooper River Group, while acting as unregistered CPOs, and Peninger, Lee and Ledoyen, while

acting as unregistered APs of a CPO, solicited, accepted or received funds from others and engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of trading in commodity futures.

60. Defendants, directly and through Lee, Ledoyen and others, employed a device, scheme or artifice to defraud pool participants and prospective pool participants or engaged in a transaction, practice or course of business which operated as a fraud or deceit upon pool participants and prospective pool participants in violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B), by: (1) making fraudulent representations concerning Peninger's trading performance, (2) falsely claiming that Peninger's trading system eliminated the risks of trading commodity futures and otherwise failing to disclose those risks, (3) guaranteeing profits and interest in connection with commodity futures trading, (4) issuing false periodic statements to pool participants, (5) making fraudulent representations that participants' funds would be invested in commodity futures when such funds were not, in fact, invested in commodity futures and instead were misappropriated by Defendants, (6) failing to disclose the risks of trading commodity futures, and (7) misappropriating pool participants' funds.

61. Peninger controlled CSA and Cooper River Group, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, CSA and Cooper River's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Peninger is liable for CSA's and Cooper River's violations of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B).

62. The foregoing acts, misrepresentations, omissions, misappropriations and failures of Peninger and others occurred within the scope of their employment, office or

agency with CSA and Peninger, doing business as Cooper River Group; therefore, CSA and Peninger, doing business as Cooper River Group, are liable for these acts in violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2 (a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

63. Each misappropriation, issuance of a false report, misrepresentation or omission of material fact, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1).

**COUNT THREE
FAILURE TO REGISTER AS A COMMODITY POOL OPERATOR**

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

64. The allegations set forth in paragraphs 1 through 63 are realleged and incorporated herein by reference.

65. Section 4m(1) of the Act, 7 U.S.C. § 6m(1), provides that it is unlawful for any CPO, unless registered under the Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as a CPO.

66. Since at least October 2002, Peninger, doing business as Cooper River Group, used the mails or instrumentalities of interstate commerce in or in connection with its business as a CPO while failing to register as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

67. Beginning in 2003, CSA used the mails or instrumentalities of interstate commerce in or in connection with its business as a CPO while failing to register as a CPO, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

68. Neither CSA nor Peninger, doing business as Cooper River Group, qualified for a registration exemption under either the Act or Regulations.

69. Peninger controlled CSA, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, CSA's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Peninger is liable for CSA's violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

70. The foregoing conduct of Peninger as alleged in this Count occurred within the scope of his employment, office or agency with CSA, therefore CSA is liable for these acts of Peninger in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

**COUNT FOUR
FAILURE TO REGISTER AS AN ASSOCIATED PERSON
OF A COMMODITY POOL OPERATOR**

Violations of Section 4k(2) of the Act, 7 U.S.C. § 6k(2)

71. The allegations set forth in paragraphs 1 through 70 are realleged and incorporated herein by reference.

72. Section 4k(2) of the Act, 7 U.S.C. § 6k(2), states that it is:

unlawful for any person to be associated with a [CPO] as a partner, officer, employee, consultant or agent . . . in any capacity that involves (i) the solicitation of funds, securities or property for participation in a commodity pool or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission . . . as an associated person of such [CPO] It shall be unlawful for a [CPO] to permit such a person to become or remain associated with the [CPO] in any such capacity if the [CPO] knew or should have known that such person was not so registered . . .

73. Since at least October 2002, Peninger and others were associated with a CPO, Peninger doing business as Cooper River Group, and involved in the solicitation of

funds for participation in pools while failing to register as an AP of the CPO, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

74. Since May 2003, Peninger and others were associated with a CPO, CSA, and involved in the solicitation of funds for participation in pools while failing to register as an AP of the CPO, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

75. CSA and Peninger, doing business as Cooper River Group, permitted Peninger and others to become and remain associated with CSA and Peninger, doing business as Cooper River Group, and knew, or should have known, that Peninger and others, were not registered as APs of CSA and Peninger, doing business as Cooper River Group, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

76. Peninger controlled CSA, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, CSA's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Peninger is liable for CSA's violations of Section 4k(2) of the Act, 7 U.S.C. § 6k(2).

**COUNT FIVE
FAILURE TO TREAT THE POOL AS A SEPARATE ENTITY AND RECEIVE
FUNDS IN THE POOL NAME**

Violations of Regulations 4.20(a) and (b), 17 C.F.R. §§ 4.20(a) and (b)

77. The allegations set forth in paragraphs 1 through 76 are realleged and incorporated herein by reference.

78. Regulation 4.20(a), 17 C.F.R. § 4.20(a), requires a CPO to operate its pool as an entity cognizable as a legal entity separate from that of the pool. Regulation 4.20(b), 17 C.F.R. § 4.20(b), requires a CPO to receive all funds from pool participants in the pool's name.

79. CSA and Peninger, doing business as Cooper River Group, never established separate legal entities or accounts in the name of the pools, in violation of Regulation 4.20(a), 17 C.F.R. § 4.20(a).

80. CSA and Peninger, doing business as Cooper River Group, received pool participants' money in their own names, rather than in the names of the pools, in violation of Regulation 4.20(b), 17 C.F.R. § 4.20(b).

81. Peninger controlled CSA, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, CSA's conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Peninger is liable for CSA's violation of Regulation 4.20(a) and (b), 17 C.F.R. § 4.20(a) and (b).

82. Each failure by Defendants to operate a pool as a legal entity separate from the CPO and each instance of receiving pool funds in a name other than the pool is alleged as separate and distinct violation of Regulations 4.20(a) and (b), 17 C.F.R. §§ 4.20(a) and (b).

**COUNT SIX
FAILURE TO COMPLY WITH DISCLOSURE REQUIREMENTS**

Violations of Regulations 4.21(a) and (b), 17 C.F.R. §§ 4.21(a) and (b)

83. The allegations set forth in paragraphs 1 through 82 are realleged and incorporated herein by reference.

84. Regulation 4.21(a), 17 C.F.R. § 4.21(a), provides that "each commodity pool operator 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 of the Regulations.

85. Regulation 4.21(b), 17 C.F.R. § 4.21(b), provides, in relevant part, that a CPO may not accept or receive funds from a prospective pool participant unless the CPO “first receives from the prospective participant an acknowledgment signed and dated by the prospective participant stating that the prospective participant received a Disclosure Document for the pool.”

86. CSA and Peninger, doing business as Cooper River Group, failed to provide to prospective pool participants a pool disclosure document prepared in accordance with Regulations 4.24 and 4.25 in violation of Regulation 4.21(a), 17 C.F.R. § 4.21(a).

87. Peninger controlled CSA, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, CSA’s conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Peninger is liable for CSA’s violation of Regulation 4.21, 17 C.F.R. § 4.21.

88. Each failure to furnish required disclosure documents to a prospective pool participant or pool participant, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.21(a), 17 C.F.R. §4.21(a).

89. Each failure to obtain from a prospective pool participant a signed acknowledgment of receipt of the required disclosure document prior to accepting or receiving funds from the prospective pool participant, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.21(b), 17 C.F.R. §4.21(b).

**COUNT SEVEN
FAILURE TO COMPLY WITH REQUIREMENTS FOR REPORTING TO POOL
PARTICIPANTS**

Violations of Regulation 4.22, 17 C.F.R. § 4.22

90. The allegations set forth in paragraphs 1 through 89 are realleged and incorporated herein by reference.

91. Regulation 4.22, 17 C.F.R. § 4.22, provides that a CPO registered or required to be registered under the Act must periodically distribute to each pool participant an “Account Statement” containing the information required by the Regulation.

92. CSA and Peninger, doing business as Cooper River Group, failed to provide account statements to pool participants in the required form and at the specified intervals in violation of Regulation 4.22, 17 C.F.R. § 4.22.

93. Peninger controlled CSA, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, CSA’s conduct alleged in this Count. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), Peninger is liable for CSA’s violation of Regulation 4.22, 17 C.F.R. § 4.22.

94. Each failure to furnish a required Account Statement to a pool participant, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.22, 17 C.F.R. §4.22.

COUNT EIGHT
DISGORGEMENT OF FUNDS FROM THE RELIEF DEFENDANTS

95. The allegations set forth in paragraphs 1 through 94 are realleged and incorporated herein by reference.

96. Defendants, directly and indirectly, have engaged in a fraudulent scheme that defrauded CSA and Cooper River Group pool participants.

97. The Relief Defendants each have received funds that were obtained as a result of the Defendants' fraudulent conduct.

98. The Relief Defendants have no legitimate entitlement to or interest in the funds received from the Defendants' fraudulent conduct.

99. By reason of the foregoing, the Relief Defendants hold funds in constructive trust for the benefit of Defendants' pool participants who were victimized by Defendants' fraudulent scheme.

100. The Relief Defendants should be required to disgorge the funds they received from the Defendants' fraudulent conduct, or the value of those funds that the Relief Defendants may have subsequently transferred to third parties.

VI.RELIEF

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

(a) an order finding that Defendants violated Sections 4b(a)(2)(i)-(iii), 4o(1)(A) and (B), 4k(2) and 4m(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii), 6o(1)(A) and (B), 6k(2) and 6m, and Regulations 4.20(a) and (b), 4.21(a) and (b), and 4.22, 17 C.F.R.

§§ 4.20(a) and (b), 4.21(a) and (b), and 4.22; that Peninger is liable for the violations of the Act and Regulations by CSA, as alleged herein, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b); and that CSA is liable for Peninger's and others' violations of the Act and Regulations, as alleged herein, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2.

(b) an order of permanent injunction prohibiting Defendants, and any other person or entity associated with them, including any successor thereof, from engaging in conduct violative of the sections of the Act and Regulations that they have been alleged to violate;

(c) an order of permanent injunction prohibiting Defendants from engaging, directly or indirectly, in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) ("commodity interest"), including but not limited to, the following:

(1) trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29);

(2) engaging in, controlling or directing the trading for any commodity interest account for or on behalf of any other person or entity, whether by power of attorney or otherwise;

(3) soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity interest;

(4) entering into any commodity interest transactions for their own personal account, for any account in which they have a direct or indirect interest and/or having any commodity interests traded on their behalf; and

(5) engaging in any business activities related to commodity interest trading.

(d) an order of permanent injunction from 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), or acting as a principal, agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9);

(e) an order directing Defendants, as well as any other person or entity associated with them, including any successor thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act or Regulations, as described herein, and interest thereon from the date of such violations;

(f) an order directing Defendants, as well as any other person or entity associated with them, including any successor thereof, to make full restitution, pursuant to such procedure as the Court may order, to every pool participant whose funds were received by them as a result of acts and practices which constitute violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;

(g) an order directing Relief Defendants to disgorge funds provided to them which represent funds provided by participants of CSA and Cooper River Group and any profits, dividends or interest derived therefrom;

(h) an order imposing upon each Defendant a civil penalty pursuant to Section 6c(d)(1) of the Act, 7 U.S.C. 13a-1, and Regulation 143.8, 17 C.F.R. § 143.8; and

(i) an order for such other and further remedial ancillary relief as the Court may deem appropriate.

Respectfully submitted,

W. WALTER WILKINS
UNITED STATES ATTORNEY

BY: /s/ John H. Douglas
JOHN H. DOUGLAS (#587)
Assistant U.S. Attorney
151 Meeting St, Suite 200
Charleston, S.C. 29401
(843) 727-4381 (voice)
(843) 727-4443 (fax)
email: john.douglas@usdoj.gov

Local Counsel for Plaintiff
Commodity Futures Trading Commission

JAMES A. GARCIA
MICHAEL SOLINSKY
Commodity Futures Trading Commission
Division of Enforcement
1155 21st Street, N.W.
Washington, D.C. 20581
(202) 418-5362 (Garcia)
(202) 418-5384 (Solinsky)
(202) 418-5523 (Facsimile)
jgarcia@cftc.gov
msolinsky@cftc.gov

Attorneys for Plaintiff