NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE

In the Matter of:	)	
	)	
CFS CAPITAL MANAGEMENT LLC	)	
(NFA ID #329167),	)	
	)	
BRIAN G. ELROD	)	
(NFA ID #314165),	)	NFA Case No. 09-BCC-020
	)	
and	)	
	)	
ANDREW G. ELROD	)	
(NFA ID #314164)	)	
	)	
Respondents.	)	

COMPLAINT

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association ("NFA"), and having reason to believe that NFA Requirements are being, have been, or are about to be violated and that the matter should be adjudicated, NFA's Business Conduct Committee issues this Complaint against CFS Capital Management LLC ("CFS"), Brian G. Elrod ("Brian Elrod") and Andrew G. Elrod ("Andrew Elrod").

ALLEGATIONS

JURISDICTION

1. CFS is a commodity trading advisor ("CTA") Member of NFA located in Lakewood, Colorado. CFS has been registered as a CTA since May 2003 and an NFA Member since January 2007.

2. Brian Elrod is the president of CFS, a listed principal and registered associated person ("AP") of CFS and an NFA Associate.

3. Andrew Elrod is a listed principal and registered AP of CFS and an NFA Associate.

BACKGROUND

4. CFS offers customers a choice of five separate trading programs that combine both futures and forex trading through its Individually Managed Account Program ("IMAP"). Four of the programs, Base, Moderate, Aggressive, and Speculative, primarily differ in the amount of leverage used.

5. The fifth program CFS offers is the Capital Preservation and Growth trading program ("CPG"), which it claims is for "long term investors looking for principal protection and above-market returns." CFS's disclosure document describes the CPG as "a hybrid investment portfolio . . . structured as a long-term strategy (10 or 15 years) with the goal of protecting a specified amount of a Customer's originally invested funds (either 90, 100, or 110 percent)."

6. The CPG divides a customer's funds into two groups, a "Principal Portion" that is invested in government securities and a "Traded Portion" that is allocated for futures and forex trading. Specifically, CFS indicated that funds in the Principal Portion would be used to purchase a zero coupon Treasury Bond that would be held for ten to fifteen years at which time it would recoup any losses that may be incurred from the futures and forex trading being conducted in the Traded Portion.

7. On October 8, 2008, CFS sent a letter to customers informing them that it had suspended all trading and was "investigating potential errors on the clearing firm account statements." In the letter, CFS further indicated that it would submit any corrections that needed to be made to the clearing firm.

8. Subsequent to this letter being sent, some customers discovered that funds were debited from their accounts while others had funds credited to their accounts for no apparent reason. Based on these events, NFA began an examination of CFS which revealed that CFS had transferred funds across customer accounts to conceal the firm's failure to purchase Treasury Bonds for customers in CPG in a timely manner as well as to cover-up trading losses – which resulted in some customer accounts going into deficit.

9. As of October 13, 2008, sixty-three CFS customer accounts had deficit balances totaling approximately $111,000. On October 20, 2008, however, CFS directed the clearing firm to reallocate approximately $350,000 of customer funds across the customer accounts, debiting some accounts and crediting those accounts in deficit, so that no account was in deficit.

10. CFS represented to NFA that volatile markets resulted in "distortions" and the reallocations were necessary to resolve these "distortions." Specifically, CFS indicated that it provides the clearing firm with weekly customer account trade allocations prior to the beginning of each trading week. The clearing firm then applied the allocations daily to the trades made in the accounts.

11. CFS stated that as a result of trading which occurred from approximately October 3, 2008 through October 8, accounts went into deficit. CFS represented that as a

result it determined after-the-fact that the weekly allocation "process was not equipped to deal with downside volatility" and therefore "a daily reallocation was needed."

12. Despite the fact that the account managers and CFS had real-time access to customers' accounts, they continued to trade these accounts that went into deficit in accordance with the allocation methodology established by CFS.

13. CFS claimed that it went through the daily trades and made adjustments as if those accounts that reached a zero or deficit balance were removed from the allocation methodology and the allocations were made to the remaining accounts. CFS then provided the clearing firm with the debits and credits to be made to the accounts based on their recalculation.

14. CFS represented to NFA that it directed the "reallocation" after it consulted with legal counsel. NFA spoke with the legal counsel that CFS represented it had consulted regarding this matter.

15. The legal counsel indicated to NFA that at the time CFS spoke with them, CFS told the legal counsel that allocations had been made that were contrary to the disclosure document and that CFS had already decided that it would reallocate the funds across the accounts.

16. Counsel indicated to NFA that it did not provide any advice as to whether or not this decision to adjust certain accounts was appropriate. Rather, counsel merely advised CFS that they should provide notification to the customers that allocations had been made contrary to the disclosure document and that adjustments to remedy the situation would be made.

17. There was no legitimate reason for CFS to remedy the deficits that resulted from trading losses in certain customer accounts by debiting the accounts of customers that were not in deficit. Additionally, the claim by CFS that it "reallocated" as if accounts that reached a deficit balance were removed from the allocation schedule does not explain how all the customer accounts that were in deficit as of October 13 would have a positive rather than a zero balance after the reallocation.

18. Pursuant to an agreement between CFS and the clearing firm, if a customer did not satisfy a deficit balance in its account at the clearing firm CFS was liable for the deficit. It appears, therefore, that CFS made the allocations across customer accounts so that it would not have to use its own money to remedy the deficits in the customer accounts.

19. In its October 8 letter to customers, CFS indicated that it was "investigating potential errors on the clearing firm account statements." However, NFA's examination did not reveal any "errors" on the account statements from the clearing firm, which appear to have properly reflected the trading activity as directed by CFS.

20. When NFA confronted CFS about the statement in its letter to customers that it was "investigating potential errors on the clearing firm account statements," CFS claimed that it was its understanding that the clearing firm would not permit customer accounts to go into deficit. Yet, the agreement between CFS and the clearing firm made clear that CFS would be responsible if customers failed to

satisfy a debit balance. Accordingly, CFS was on notice that customer accounts could go into deficit.

21. For those customers in the CPG, CFS was supposed to invest the Principal Portion of customer funds in government securities to protect the customer's principal investment. For only three customers, however, did CFS purchase the government securities within less than a month of the customer's initial investment.

22. For the remaining customers in the CPG, CFS took between two and eight months to purchase a government security. Moreover, CFS did not purchase government securities for seven customers in the CPG until after the October 20 "reallocation" of customer funds, despite the fact that these customers had all been in the CPG for at least three months, and four had been in the CPG for six months. Due to trading losses, six of these accounts would not have had sufficient funds to purchase the required government securities if the accounts had not been credited as part of the reallocation.

23. Thus, in addition to using the reallocation to avoid having customer accounts go into deficit, CFS also used it to hide a further misuse of customers' funds as a result of its failure to purchase the government securities required by its own program.

APPLICABLE RULES

24. NFA Compliance Rule 2-39(a) provides, in pertinent part, that NFA Members and their Associates who solicit customers, introduce customers to a counterparty, or

manage accounts on behalf of customers in connection with forex transactions shall comply with NFA Compliance Rule 2-36(b), (c), and (e).

25. NFA Compliance Rule 2-36(b)(1) provides, in pertinent part, that no Forex Dealer Member ("FDM") or Associate shall cheat, defraud or deceive, or attempt to cheat, defraud, or deceive any other person.

26. NFA Compliance Rule 2-36(b)(5) provides, in pertinent part, that no FDM or Associate shall willfully submit materially false or misleading information to NFA or its agents.

27. NFA Compliance Rule 2-36(b)(6) provides, in pertinent part, that no FDM or Associate shall embezzle, steal or purloin or knowingly convert any money, securities or other property received or accruing to any person.

28. NFA Compliance Rule 2-36(c) provides, in pertinent part, that FDMs and their Associates shall observe high standards of commercial honor and just and equitable principles of trade.

29. NFA Compliance Rule 2-36(e) provides that each FDM shall diligently supervise its employees and agents in the conduct of their forex activities for and on behalf of the FDM. Each Associate of an FDM who has supervisory duties shall diligently exercise such duties in the conduct of that Associate's forex activities for or on behalf of the FDM.

30. NFA Compliance Rule 2-29(b)(1) provides that no Member or Associate shall use any promotional material which is likely to deceive the public.

31. NFA Compliance Rule 2-29(b)(2) provides, in pertinent part, that no Member or Associate shall use any promotional material which contains any material

misstatement of fact or which the Member or Associate knows omits a fact and such omission makes the material misleading.

32. NFA Compliance Rule 2-29(b)(3) provides that no Member or Associate shall use any promotional material which mentions the possibility of profit unless accompanied by an equally prominent statement of the risk of loss.

33. NFA Compliance Rule 2-29(b)(5)(i) provides, in pertinent part, that no Member or Associate shall use any promotional material which includes information about the past performance of any actual accounts unless such information is and can be demonstrated to be representative of the actual performance for the same time period of all reasonably comparable accounts.

34. NFA Compliance Rule 2-22 provides, in pertinent part, that no Member or Associate shall represent or imply in any manner whatsoever that the Member or Associate has been approved or that such Member's or Associate's abilities have in any respect been passed upon by NFA.

35. NFA Compliance Rule 2-2(a) provides that no Member or Associate shall cheat, defraud or deceive, or attempt to cheat, defraud or deceive, any customer.

36. NFA Compliance Rule 2-2(f) provides that no Member or Associate shall willfully submit materially false or misleading information to NFA or its agents.

37. NFA Compliance Rule 2-9(a) provides that each Member shall diligently supervise its employees and agents in the conduct of their commodity futures activities for or on behalf of the Member. Each Associate who has supervisory duties shall diligently exercise such duties in the conduct of that Associate's commodity futures activities on behalf of the Member.

COUNT I

VIOLATION OF NFA COMPLIANCE RULES 2-36(b)(1), (b)(6), AND (c): MISUSE OF CUSTOMER FUNDS.

38. The allegations contained in paragraphs 1 through 25, 27 and 28 are realleged as paragraph 38.

39. As alleged above, CFS arbitrarily transferred $350,000 of customer funds from certain accounts to cover-up its mistakes and reduce its own potential liability.

40. Specifically, CFS misused customer funds to cover the deficits in certain customer accounts to avoid having to cover these deficits itself and to hide the fact that it had failed to properly implement the principal protection portion of the CPG.

41. CFS also attempted to deceive its customers by indicating that the transfer of funds was due to an error on the part of the clearing firm.

42. Andrew Elrod is the principal responsible for supervising the trading conducted by the trading advisors. In this role, he is responsible for ensuring that trading in customer accounts is being conducted according to the program in which the customer is enrolled.

43. Andrew Elrod is also the person at CFS that establishes the weekly allocation for customer trades and was the one directly responsible for determining the "reallocation" scheme in October 2008.

44. Brian Elrod is the president of CFS, the person ultimately responsible for the activities of CFS, and the one who signed-off on the "reallocation."

45. By reason of the foregoing acts and omissions, CFS, Andrew Elrod and Brian Elrod are charged with violations of NFA Compliance Rules 2-36(b)(1), (b)(6), and (c), as applicable pursuant to NFA Compliance Rule 2-39.

COUNT II

VIOLATION OF NFA COMPLIANCE RULES 2-2(a) AND 2-36(b)(1): FAILING TO FOLLOW THE TERMS OF THE DISCLOSURE DOCUMENT AND MANAGEMENT AGREEMENT.

46. The allegations contained in paragraphs 1, 5, 6, 21 through 25 and 35 are realleged as paragraph 46.

47. As alleged above, the terms of CFS's disclosure document and management agreement provided that CFS would use a portion of the funds of customers in the CPG to purchase a zero coupon Treasury Bond that would be held for ten to fifteen years at which time it would recoup any losses that may be incurred from the futures and forex trading being conducted.

48. In addition, CFS's disclosure document provided that no management fee would be charged for funds allocated to the CPG. In June 2008, however, customers in the CPG were charged in aggregate $584 in management fees.

49. Additionally, the management agreement indicated that CFS customers would be charged a ten percent monthly incentive fee, with CFS reserving the right to raise the fee to twenty percent after providing at least seven days notice.

50. In June 2008, CFS began charging its customers a twenty percent incentive fee, but failed to provide customers with the required notice of the increase. Additionally, in July 2008, CFS incorrectly charged some customers more than the twenty percent incentive fee, which it claimed was due to using an incorrect

calculation. As a result, there were 196 customers overcharged a total of more than $11,000.

51. In a letter dated January 20, 2009, which NFA received during NFA's examination, CFS indicated that it would reimburse customers for the improperly charged incentive fees. CFS, however, did not start reimbursing customers until the week of May 18, 2009, almost a full year after the improper charges were made and only after NFA raised this matter as part of the examination of CFS.

52. In sum, CFS failed to follow the terms of its disclosure document and management agreement by failing to purchase the government securities for customers in the CPG, by charging management fees to persons in the CPG, by raising its incentive fee without providing the notice required in its management agreement, and by charging more than the incentive fee disclosed to its customers.

53. By reason of the foregoing acts and omissions, CFS is charged with violations of NFA Compliance Rules 2-2(a) and 2-36(b)(1), as applicable pursuant to NFA Compliance Rule 2-39(a).

COUNT III

VIOLATION OF NFA COMPLIANCE RULES 2-29(b)(1), (b)(2), (b)(3), (b)(5)(i), 2-36(b)(1), AND 2-22: USING FRAUDULENT AND MISLEADING PROMOTIONAL MATERIALS.

54. The allegations contained in paragraphs 1, 2, 24, 25 and 30 through 34 are realleged as paragraph 54.

55. At the time of NFA's examination in December 2008, CFS was soliciting customers through pamphlets as well as a website it operated.

56. A cover letter signed by Brian Elrod was included with the pamphlets. The pamphlets downplayed the risk of loss and included examples of consistently profitable trading accounts. These results, however, were not consistent with the actual results of CFS's customers. For example, in October 2008, some of CFS's customer accounts had losses of over 90%.

57. Additionally, the examples for the CPG program in the pamphlets omitted the effect the upfront fee of ten to fifteen percent would have on the profitability of the accounts. The upfront fee was to be charged on the amount of funds allocated to purchase the government security. There was no explanation, however, that the amount of funds effectively available for trading would be reduced by the amount of the upfront fee collected by CFS.

58. Moreover, although the pamphlet claimed that the upfront fee would only be charged on the amount allocated to purchase the government security (the Principal Portion of the program), CFS in fact collected the fee based on the entire amount of funds invested in the CPG, including those allocated to trading.

59. The pamphlets also included statements of opinion that were not identified as such and did not have any reasonable basis in fact. For example, in the cover letter sent with the pamphlets Brian Elrod stated that the "investment options that are now available to you are some of the most protective investments that I have ever witnessed in over 25 years." Additionally, the pamphlets claimed that CFS "selected from among some of the world's most respected and successful institutional trading advisors."

60. NFA's review of CFS's website found many of the same deficiencies. The website mentioned the possibility of profit without an equally prominent statement of the risk of loss. In fact, the website downplayed the risk of loss promising a "Safer Place to Invest," that CFS would "Rescue Your Retirement" and give customers "THE SECRET of how many WEALTHY INVESTORS did not lose a dime of principal during the recent financial meltdown."

61. The manual used for training CFS APs instructed APs to make statements to customer that were of a misleading nature. For example, the training manual instructed APs to tell customers "most of these investments were typically reserved for high net worth and institutional investors only" and "to assure [customers] that there is no risk."

62. In addition to the misleading statements alleged above, CFS also made statements claiming NFA had approved its trading programs. For example, CFS claimed in one of the pamphlets that "NFA approved our request for incorporation of commodities and futures trading into the forex accounts, utilizing U.S. futures exchanges." In this same pamphlet, CFS claimed that "NFA approved our request for approval of an expansion of IMAP to include a long-term capital preservation program which we have named "CPG" for Capital Preservation and Growth Program."

63. CFS further claimed that the concept of their IMAP accounts had been "registered with and approved by" NFA. However, NFA does not approve trading programs.

64. By reason of the foregoing acts and omissions, CFS and Brian Elrod are charged with violations of NFA Compliance Rules 2-29(b)(1), (b)(2), (b)(3), (b)(5)(i) and 2-36(b)(1), as applicable pursuant to NFA Compliance Rule 2-39(a), and CFS is also charged with violations of NFA Compliance Rule 2-22.

COUNT IV

VIOLATION OF NFA COMPLIANCE RULES 2-2(f) AND 2-36(b)(5): WILLFULLY SUBMITTING FALSE OR MISLEADING INFORMATION TO NFA.

65. The allegations contained in paragraphs 1 through 3, 24, 26 and 36 are realleged as paragraph 65.

66. During NFA's examination, Brian Elrod and Andrew Elrod told NFA that CFS had never charged incentive fees to its customers.

67. When NFA reviewed the monthly statements for CFS customers, however, it found that customers had, in fact, been charged incentive fees for at least June and July 2008.

68. When NFA confronted Brian Elrod and Andrew Elrod with this information, they represented that they had claimed that CFS never charged incentive fees because CFS did not keep the incentive fee for itself but rather paid it out to the trading advisors.

69. By reason of the foregoing acts and omissions, CFS, Brian Elrod and Andrew Elrod are charged with violations of NFA Compliance Rules 2-2(f) and 2-36(b)(5), as applicable pursuant to NFA Compliance Rule 2-39(a).

COUNT V

VIOLATION OF NFA COMPLIANCE RULES 2-9(a) AND 2-36(e): FAILING TO DILIGENTLY SUPERVISE.

70. The allegations contained in paragraphs 1 through 24, 29 and 37 through 69 are realleged as paragraph 70.

71. Andrew Elrod, a listed principal and AP of CFS, is responsible for supervising the trading conducted by the trading advisors. In this role, he is responsible for ensuring that trading in customer accounts is conducted according to the program in which the customer is enrolled.

72. Andrew Elrod is the person at CFS who establishes the weekly allocation for customer trades and was responsible for determining the "reallocation" in October 2008.

73. Brian Elrod is the president, listed principal, and AP of CFS. Throughout NFA's examination of CFS, Brian Elrod routinely responded to NFA's inquiries and demonstrated that he was in a supervisory position over the firm's activities.

74. Moreover, Brian Elrod presented himself as the "face" of CFS. He signed the letter that is sent out with soliciting materials, presents seminars to investors, and hosts a weekly radio show called "Big Money."

75. Accordingly, Brian Elrod was ultimately responsible for supervising the activities of CFS and ensuring its compliance with all applicable NFA rules.

76. The serious violations alleged above demonstrate that CFS, Brian Elrod and Andrew Elrod failed to diligently supervise CFS's operations.

77. By reason of the foregoing acts and omissions, CFS, Brian Elrod and Andrew Elrod are charged with violations of NFA Compliance Rules 2-9(a) and 2-36(e), as applicable pursuant to NFA Compliance Rule 2-39(a).

PROCEDURAL REQUIREMENTS

ANSWER

You must file a written Answer to the Complaint with NFA within thirty (30) days of the date of the Complaint. The Answer shall respond to each allegation in the Complaint by admitting, denying or averring that you lack sufficient knowledge or information to admit or deny the allegation. An averment of insufficient knowledge or information may only be made after a diligent effort has been made to ascertain the relevant facts and shall be deemed to be a denial of the pertinent allegation.

NFA staff is authorized to grant such reasonable extensions of time in which an Answer may be filed as it deems appropriate.

The place for filing an Answer shall be:

National Futures Association
300 South Riverside Plaza
Suite 1800
Chicago, Illinois 60606
Attn: Legal Department-Docketing

E-Mail: Docketing@nfa.futures.org
Facsimile: 312-781-1672

Failure to file an Answer as provided above shall be deemed an admission of the facts and legal conclusions contained in the Complaint. Failure to respond to any allegation shall be deemed an admission of that allegation. Failure to file an Answer as provided above shall be deemed a waiver of hearing.

POTENTIAL PENALTIES, DISQUALIFICATION AND INELIGIBILITY

At the conclusion of the proceedings conducted as a result of or in connection with the issuance of this Complaint, NFA may impose one or more of the following penalties:

(a) expulsion or suspension for a specified period from NFA membership;

(b) bar or suspension for a specified period from association with an NFA Member;

(c) censure or reprimand;

(d) a monetary fine not to exceed $250,000 for each violation found; and

(e) order to cease and desist or any other fitting penalty or remedial action not inconsistent with these penalties.

The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act. Respondents in this matter who apply for registration in any new capacity, including as an AP with a new sponsor, may be denied registration based on the pendency of this proceeding.

Pursuant to the provisions of Commodity Futures Trading Commission ("CFTC") Regulation 1.63, penalties imposed in connection with this Complaint may temporarily or permanently render Respondents who are individuals ineligible to serve on disciplinary committees, arbitration panels and governing boards of a self-regulatory organization, as that term is defined in CFTC Regulation 1.63.

NATIONAL FUTURES ASSOCIATION
BUSINESS CONDUCT COMMITTEE

Dated: 06/30/09

By: _____
Chairperson

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AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on June 30, 2009, I served copies of the attached Complaint, by sending such copies in the United States mail, first-class delivery, and by overnight mail, in envelopes addressed as follows:

CFS Capital Management LLC
Denver West, Bldg. 4
1536 Cole Boulevard
Suite 210
Lakewood, CO 80401
Attn: Brian Elrod, President

Brian G. Elrod
16488 Ouray Road East
Pine, CO 80470

Andrew G. Elrod
1187 County Road 72
Bailey, CO 80421

Nancy Miskovich-Paschen

Nancy Miskovich-Paschen

Subscribed and sworn to before me
on this 30th day of June 2009.

Mary A. Patton

Notary Public

OFFICIAL SEAL
Mary A. Patton
Notary Public, State of Illinois
MY COMMISSION EXPIRES 7-17-09