NATIONAL FUTURES ASSOCIATION BEFORE THE BUSINESS CONDUCT COMMITTEE

FILED

JUL 2 5 2012

In the Matter of:) NATIONAL FUTURES ASSOCIATION) LEGAL DOCKETING
ALPARI US LLC (NFA ID #379678),))
JERMAINE C. HARMON (NFA ID #422961),)) NFA Case No. 12-BCC-020
and))
RICHARD A. LANI (NFA ID #101840),)))
Respondents.))

DECISION

Having reviewed all matters relevant to the Complaint issued by the Business Conduct Committee (BCC or Committee) of National Futures Association (NFA) in the above-captioned case, and having considered the Offer of Settlement (Offer) submitted by Alpari US LLC (Alpari), Jermaine C. Harmon (Harmon) and Richard A. Lani (Lani), and having accepted their Offer, the Committee issues this Decision as to Alpari, Harmon and Lani.

I

ALLEGED VIOLATIONS OF NFA REQUIREMENTS

On June 29, 2012, the Committee issued a Complaint against Alpari, a futures commission merchant and forex dealer Member of NFA located in New York City. The Complaint also named Harmon and Lani, two of the firm's associated persons (APs) and listed principals, as Respondents. The Complaint charges Alpari with violating several NFA Requirements, including NFA Compliance Rule 2-43(a), for improperly cancelling forex trades and removing profits from customer accounts; NFA

Compliance Rule 2-48(a), for failing to timely report trade data and other required information to NFA; NFA Compliance Rule 2-36(c), for failing to observe high standards of commercial honor; NFA Compliance Rule 2-9(b), for failing to comply with NFA's Enhanced Supervisory Requirements; and NFA Compliance Rule 2-10, for failing to keep accurate records. The Complaint also alleges that Alpari – together with Harmon and Lani – violated NFA Compliance Rule 2-36(e), for failing to supervise.

Ш

OFFER OF SETTLEMENT

Alpari, Harmon and Lani submitted an Offer in which they offered to settle this case on the following terms and conditions. Without admitting or denying the allegations of the Complaint, Alpari, Harmon and Lani consented to the inclusion of findings in any Decision of the BCC accepting their Offer that they committed the violations alleged in the Complaint and they further agreed as follows:

- 1. Within 30 days of the effective date of the Decision accepting this Offer, Alpari agreed to pay a fine to NFA in the amount of \$200,000.
- 2. Within 30 days of the effective date of the Decision accepting this Offer, Alpari agreed to refund the total sum of \$8,935.60 to customers for losses they incurred as a result of the price adjustments that Alpari made to their accounts in connection with the October 2011 "market event", as alleged in Count I of the Complaint. Alpari also agreed to provide verification to NFA that these refunds were paid to and received by customers.
- 3. Within 180 days of the effective date of the Decision accepting this Offer, Alpari agreed to submit a written report to NFA, which documents: (i) the results of an independent review of Alpari's electronic trading platforms conducted by a qualified outside party, where such review must, at a minimum, be designed to ensure that the electronic trading platforms utilized by Alpari comply with the requirements set forth in NFA Interpretive Notice, Compliance Rule 2-36(e): Supervision of the Use of Electronic Trading Systems; and (ii) the undertakings Alpari has implemented to remedy deficiencies

with the firm's internal controls, particularly regarding its reporting and recordkeeping procedures, and the firm's compliance with NFA's Enhanced Supervisory Requirements, as alleged in Counts I, II and III of the Complaint.

4. Harmon and Lani agreed that the charges against them shall remain open for one year commencing on the date of a Decision accepting this Offer. In the event that Harmon and Lani are not charged by NFA for a failure to supervise during this one-year period, they agreed that the instant charges against them will be dismissed with prejudice. If, during the one-year probationary period Harmon or Lani is charged by NFA for failure to supervise, they agreed that the present matter shall proceed to a hearing as to them.

Ш

FINDINGS

Pursuant to the Offer of Alpari, Harmon and Lani, the Committee finds that Alpari violated NFA Compliance Rule 2-43(a), by improperly cancelling forex trades and removing profits from customer accounts; NFA Compliance Rule 2-48(a), by failing to timely report trade data and other required information to NFA; NFA Compliance Rule 2-36(c), by failing to observe high standards of commercial honor; NFA Compliance Rule 2-9(b), by failing to comply with NFA's Enhanced Supervisory Requirements; and NFA Compliance Rule 2-10, by failing to keep accurate records. The Committee also finds that Alpari, Harmon and Lani violated NFA Compliance Rule 2-36(e), by failing to supervise.

IV

PENALTIES

Pursuant to the Offer made by Alpari, Harmon and Lani, the Committee orders as follows:

- 1. Within 30 days of the effective date of the Decision accepting this Offer, Alpari shall pay a fine to NFA in the amount of \$200,000.
- Within 30 days of the effective date of the Decision accepting this Offer, Alpari shall refund the total sum of \$8,935.60 to customers for losses they incurred as a result of the price adjustments that Alpari made to their accounts in connection with the October 2011 "market event", as alleged in Count I of the Complaint. Alpari shall provide verification to NFA that these refunds were paid to and received by customers.
- 3. Within 180 days of the effective date of the Decision accepting this Offer, Alpari shall submit a written report to NFA, which documents: (i) the results of an independent review of Alpari's electronic trading platforms conducted by a qualified outside party, where such review must, at a minimum, be designed to ensure that the electronic trading platforms utilized by Alpari comply with the requirements set forth in NFA Interpretive Notice, Compliance Rule 2-36(e): Supervision of the Use of Electronic Trading Systems; and (ii) the undertakings Alpari has implemented to remedy deficiencies with the firm's internal controls, particularly regarding its reporting and recordkeeping procedures, and the firm's compliance with NFA's Enhanced Supervisory Requirements, as alleged in Counts I, II and III of the Complaint.
- 4. The charges against Harmon and Lani shall remain open for one year commencing on the date of a Decision accepting this Offer. In the event that Harmon and Lani are not charged by NFA for a failure to supervise during this one-year period, the instant charges against them will be dismissed with prejudice. If, during the one-year probationary period Harmon or Lani is charged by NFA for failure to supervise, the present matter shall proceed to a hearing as to them.

The Offer and any Decision accepting this Offer shall be expressly contingent upon the following terms and conditions: (a) the BCC's acceptance of this Offer shall operate to bar any future Member Responsibility Action or BCC Complaints against Alpari, Harmon and Lani for any conduct occurring, of which NFA has corporate knowledge, prior to and up to the date of this Offer; and (b) the BCC's acceptance of this Offer shall resolve and terminate all complaints, investigations and audits relative to

Alpari, Harmon and Lani that are pending as of the date of the Committee's acceptance of this Offer.

Notwithstanding the foregoing terms and conditions, the Offer of Alpari, Harmon and Lani, and this Decision accepting their Offer, may be used in an action to enforce the terms thereof or in a subsequent disciplinary action or regulatory action, where they may be considered as evidence in aggravation.

٧

<u>INELIGIBILITY</u>

Pursuant to the provisions of Commodity Futures Trading Commission (CFTC) Regulation 1.63, this Decision and the sanctions imposed herein render Harmon and Lani ineligible to serve on a disciplinary committee, arbitration panel, oversight panel or governing board of any self-regulatory organization, as that term is defined in CFTC Regulation 1.63, until the later of three years after the effective date of this Decision, or until they have satisfied all the sanctions and conditions imposed by this Decision.

> NATIONAL FUTURES ASSOCIATION BUSINESS CONDUCT COMMITTEE

Dated: 7/25/2012

m/cxc/decisionsalpari

AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on July 25, 2012, I served copies of the attached Decision, by sending such copies by e-mail and regular mail, first-class delivery, in envelopes addressed as follows to:

David Stawick
Office of the Secretariat
Commodity Futures Trading
Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
E-mail: dstawick@cftc.gov

Ana D. Petrovic, Esq.
Duane Morris LLP
190 South LaSalle Street
Suite 3700
Chicago, IL 60603-3433
E-mail: adpetrovic@duanemorris.com

Tempest Thomas
Office of Proceedings
Commodity Futures Trading
Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
E-mail: tthomas@cftc.gov

Robert P. Bramnik, Esq.
Duane Morris LLP
190 South LaSalle Street
Suite 3700
Chicago, IL 60603-3433
E-mail: rpbramnik@duanemorris.com

and by hand delivery to:

Cynthia Cain Ioannacci, Esq. National Futures Association 300 South Riverside Plaza Suite 1800 Chicago, IL 60606

Nancy Miskovich-Paschen

Subscribed and sworn to before me on this 25th day of July 2012.

Notary Public

OFFICIAL SEAL MARY A PATTON NOTARY PUBLIC, STATE OF ILLINOIS MY COMMISSION EXPIRES 08/28/2013