

FILED

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NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of:)	
)	
JMJ CAPITAL GROUP LLC)	
(NFA ID #395224),)	
)	NFA Case No. 08-BCC-031
JOEL GARCIA)	
(NFA ID #395274),)	
)	
and)	
)	
RAFAEL CARNICER)	
(NFA ID #395275),)	
)	
Respondents.)	

COMPLAINT

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association (“NFA”), and having found reason to believe that NFA Compliance Rules (“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 JMJ Capital Group LLC (“JMJ”), Joel Garcia (“Garcia”), and Rafael Carnicer (“Carnicer”).

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, JMJ was a commodity pool operator (“CPO”) NFA Member. As such, JMJ was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.

2. At all times relevant to this Complaint, Garcia and Carnicer were principals and associated persons ("AP"s) of JMJ and Associate Members of NFA. As such, Garcia and Carnicer were and are required to comply with NFA Requirements and are subject to disciplinary proceedings for violations thereof. JMJ is liable for violations of NFA Requirements committed by Garcia and Carnicer during the course of their activities on behalf of JMJ.

BACKGROUND

3. JMJ has been a CPO Member of NFA since February 29, 2008 and is located in Miami, Florida. Carnicer and Garcia have been APs and principals of JMJ since the day of its inception and are the only two individuals who have ever been affiliated with JMJ in any registered capacity. The Exxelus Option Fund LLC ("Exxelus" or "the pool") was listed with NFA on February 28, 2008 and was JMJ's only active pool.
4. NFA sent a notice to CPO Members in September 2008 requesting certain financial information as of September 30, 2008 for each pool listed by the CPO that had experienced a drawdown of 25% or more since the beginning of the year. All CPOs were required to respond in some fashion by October 8th. JMJ did not make a response and NFA staff attempted to contact the firm on several occasions without success to determine why it had not. An NFA audit team visited JMJ's office on Friday, October 31st, and found that JMJ was located in what appeared to be a storage unit that had been converted into office space. Although the sign on the door advertised for an electronic company, Carnicer was present and confirmed that it was JMJ's office. He told the auditors that JMJ

was winding down business and that Exxelus had been liquidated because it had suffered substantial losses due to adverse market movements.

5. Further discussions with Carnicer on November 3rd, as well a discussion with Carnicer, Garcia and a group of investors on the next day, combined with the unwillingness or inability of JMJ's representatives to produce books and records and other information that NFA required of them did little to answer NFA's initial concerns about JMJ's operations. The confusion created by JMJ's lack of records and the failure of the firm and its principals to cooperate in NFA's investigation greatly hindered NFA's attempts to determine the nature of JMJ's business, the identities of its customers and pool participants, the value of their investments, and the amount and location of assets under management with any degree of confidence and evidenced a serious failure to supervise.

APPLICABLE RULES

6. NFA Compliance Rule 2-5 provides, in pertinent part, that each Member and Associate shall cooperate promptly and fully with NFA in any NFA investigation, inquiry, audit, examination or proceeding regarding compliance with NFA requirements or any NFA disciplinary or arbitration proceeding.
7. NFA Compliance Rule 2-13(a) provides that any Member who violates any of Commodity Futures Trading Commission ("CFTC") Regulations 4.1, 4.7, 4.12 and 4.16 through 4.41 shall be deemed to have violated an NFA requirement.
8. 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 RULE 2-13(a): FAILURE TO PREPARE, DISTRIBUTE AND MAINTAIN REQUIRED REPORTS AND RECORDS.

9. The allegations contained in paragraphs 1 and 7 are realleged as paragraph 9.
10. CFTC Regulation 4.23, in pertinent part, requires each CPO to make and maintain certain records for the CPO and each pool that it operates in an accurate, current and orderly manner at its main business office and in accordance with CFTC Regulation 1.31.
11. NFA required JMJ to produce certain books and records that were necessary to the conduct of its business. For example, NFA sent a letter to JMJ on November 7, 2008 that required the firm to produce the following books and records no later than November 10, 2008:
 - Signature pages of all members' operating agreements;
 - Account statements from any carrying broker used by funds controlled by JMJ;
 - Support for Garcia's representation to NFA that all members were aware that they were investing in the firm and not in the pool;
 - All financial records for JMJ Holdings, JMJ Capital Group LLC, JMJ Capital Investments Ltd Co. and all funds;
 - Details of an \$825,032 disbursement from an account in January 2008;
 - Details of any cash disbursements or deposits involving accounts traded at specified futures commission merchants;
 - Explanations and supporting documents relating to a \$44,399 withdrawal from an account which was deposited into a bank

account on October 24, 2008, and withdrawals from that account of \$20,000 and \$1,000 on October 27, 2008; and

- Signed operating agreements for all investors in the JMJ Holding Group, JMJ Capital Group LLC, JMJ Capital Investments Ltd. Co. and the funds and a detailed listing of investors and their current percentage ownership in the entities.
12. JMJ failed to make and maintain the books and records identified in paragraph 11, as well as other required records, in an accurate, current and orderly manner at its main business office in that the firm failed to produce a significant amount of the books and records required by NFA during the course of its inquiry in a timely fashion and Carnicer and Garcia claimed that production was greatly hampered by the circumstance that *what books and records JMJ had were kept*, not at JMJ's main business office, but rather, in piecemeal fashion in various locations, principally the homes of various individuals who have invested with them.
13. By reason of the foregoing acts and omissions, JMJ is charged with violations of NFA Compliance Rule 2-13(a).

COUNT II

VIOLATION OF NFA COMPLIANCE RULE 2-5: FAILURE TO COOPERATE IN AN NFA INVESTIGATION.

14. The allegations contained in paragraphs 1 through 5 and paragraph 6 are *realleged as paragraph 14.*
15. JMJ, Carnicer and Garcia failed to cooperate promptly and fully in an NFA investigation in that they failed to produce books and records required of them by NFA in a timely manner. Although Carnicer and Garcia represented to NFA that at least some of the books and records that NFA required them and JMJ to

produce pursuant to its investigation existed, they failed to produce many of the required books and records, claiming that their “day jobs” left them little time to collect the documents from the various places where they kept them.

16. JMJ, Carnicer and Garcia failed to cooperate promptly and fully in an NFA investigation in that they *provided fragmentary and sometimes conflicting* representations regarding JMJ’s operations, performance, reporting and financial information. For example:

- Carnicer told NFA auditors on November 3, 2008 that he and Garcia created JMJ Holdings Group (“JMJ Holdings”) which, in turn, owned JMJ. He said that the sole purpose of JMJ Holdings was speculative investment through its ownership of JMJ which, he said, is the general partner of and the sole participant in the Exxelus pool. During a November 4, 2008 meeting, Garcia represented to NFA that JMJ was managed by the owners of JMJ Holdings. Despite these representations by Carnicer and Garcia, JMJ provided a letter to NFA on November 11, 2008 which represented that JMJ and its principals had no knowledge of the existence of JMJ Holdings or of the identity of its principals.
- Carnicer told NFA that trading profits increased the initial \$425,000 invested in Exxelus to a maximum value of \$495,000, but that it only had approximately \$44,900 in assets as of October 31, 2008. He represented that the loss was incurred subsequent to the end of September 2008 – during the first few weeks of October – and said that, because the significant losses occurred after September 30th, JMJ did not send the requested drawdown information to NFA. This representation was inaccurate as the pool’s statements reflected that its value had dropped to approximately \$189,000 on September 30, 2008. Therefore, the pool’s drawdown from its inception was approximately 56% at that time and, consequently, JMJ should have provided NFA with the requested drawdown information.
- Carnicer first told NFA that no written information was provided to JMJ Holdings investors informing them of the pool’s losses. However, he stated later that they did circulate a letter regarding the loss and, later yet, said that he was unsure if any documentation was sent out.

- Carnicer told NFA that no statements reporting Exxelus's performance had ever been sent to investors, and that all information regarding performance was given to the 120 partners either over the phone or face-to-face. During a November 4th meeting with NFA, Garcia told NFA that pool members were provided with quarterly statements reflecting the pool's performance.
- On October 31, 2008, Carnicer told NFA that Exxelus was being liquidated and that he intended to prepare a liquidation statement shortly. On November 3, 2008 Carnicer confirmed that Exxelus was in the process of being liquidated, but, contrary to what he had told NFA three days earlier, he said that there were no plans to prepare a liquidation statement.
- Carnicer represented to NFA that JMJ's investors understood the risks and had signed risk disclosures prior to investing. NFA required him to produce the signed risk disclosures; however, neither Carnicer nor anyone else has done so.
- Garcia told NFA on November 4, 2008 that JMJ had \$44,900 remaining on deposit at Bank of America ("BOA") and that they were waiting to see if they would have any further expenses from NFA's investigation before sending funds out to the participants. His representation of funds in BOA was inconsistent with bank statements for four different BOA accounts that were provided to NFA at the November 4th meeting which reflected an aggregate balance of approximately \$34,500 as of October 31, 2008.
- On November 7, 2008 NFA sent a letter to JMJ which required JMJ to produce certain books and records by November 10th. NFA auditors travelled to Miami on November 10th to retrieve the material and tried to contact Carnicer by telephone. Although Carnicer did not answer, the auditors did contact Garcia who added Rafael Carnicer, Sr. ("Carnicer Sr.") to the call. Garcia and Carnicer Sr. acknowledged receiving NFA's letter and said that they had contacted and met with JMJ investors over the weekend, but that they had not gathered the required documents and information. They said that a firm representative was working on a letter to NFA that would be sent later that afternoon. They declined to describe the contents of the letter but said that after they received a response from NFA, they would "get the ball rolling". When the auditors explained that NFA was likely to take disciplinary action for the failure to comply with NFA's request and that the consequence could be that JMJ would be required to cease doing business, one of JMJ's representatives replied, "Is that all?"

- Although JMJ provided an e-mail to NFA late in the afternoon of November 11th (signed only by "JMJ Capital Group LLC") that partially responded to some of NFA's inquiries, neither JMJ nor anyone acting on its behalf has provided all of the information or any of the documents required by NFA's letter of November 7th.

17. By reason of the foregoing acts and omissions, JMJ, Garcia and Carnicer are charged with violations of NFA Compliance Rule 2-5.

COUNT III

VIOLATION OF NFA COMPLIANCE RULE 2-9(a): FAILING TO DILIGENTLY SUPERVISE EMPLOYEES AND AGENTS IN THE CONDUCT OF THEIR COMMODITY FUTURES ACTIVITIES.

18. The allegations contained in paragraphs 1, 2 and 8 are realleged as paragraph 18.
19. At all times relevant to this Complaint, JMJ, Carnicer and Garcia were responsible for the diligent supervision of JMJ's employees and agents in the conduct of their commodity futures activities for or on behalf of JMJ.
20. The diligent supervision of a Member's employees and agents requires, in part, supervision of a Member so as to ensure that the Member makes and maintains required records in compliance with CFTC Regulations and NFA Requirements.
21. The allegations contained in paragraphs 10 through 12 are realleged as paragraph 21.
22. JMJ, Carnicer and Garcia failed to diligently supervise JMJ so as to ensure that it made and maintained required records in compliance with CFTC Regulations and NFA Requirements in that JMJ's books and records were in complete disarray and, rather than being maintained in JMJ's main business office, to the extent that they existed at all, their custody was scattered between an unknown

and largely unidentified number of participants in JMJ's operations and Carnicer and Garcia failed to gather the records and produce them to NFA in a timely fashion.

23. The diligent supervision of a Member's employees and agents in the conduct of their commodity futures activities requires, in part, supervision of employees and agents to ensure their prompt and full cooperation in any NFA investigation.
24. The allegations contained in paragraphs 15 and 16 are realleged as paragraph 24.
25. By reason of the foregoing acts and omissions, JMJ, Garcia and Carnicer are charged with violations of NFA Compliance Rule 2-9(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.*

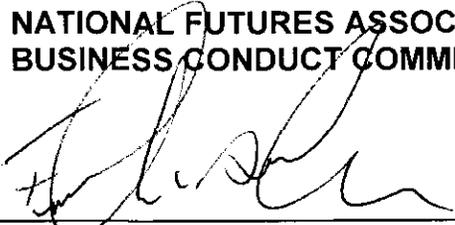
The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act. Respondents

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 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: 12/12/08

By: 
Chairperson

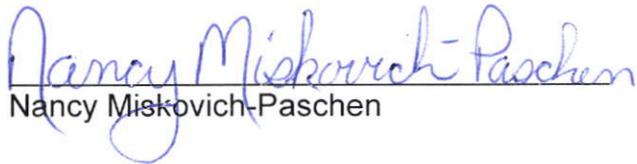
AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on December 12, 2008, 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:

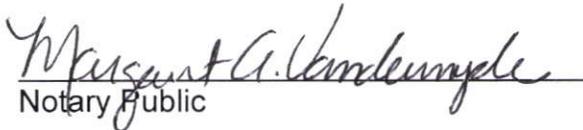
JMJ Capital Group LLC
12051 SW 131st Avenue
Miami, FL 33186
Attn: Rafael Carnicer

Rafael Carnicer
6650 SW 90th Ct.
Miami, FL 33173

Joel Garcia
8600 SW 149th Avenue
Apt. 611
Miami, FL 33193


Nancy Miskovich-Paschen

Subscribed and sworn to before me
on this 12th day of December 2008.


Notary Public

