

NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE

FILED

MAR 16 2009

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of:)

LAKE SHORE ASSET MANAGEMENT)
LIMITED)
(NFA ID #372911),)

Respondent.)

NFA Case No. 09-BCC-004

COMPLAINT

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association ("NFA"), and having found 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 ("Committee") issues this Complaint against Lake Shore Asset Management Limited ("Lake Shore").

ALLEGATIONS

1. At all times relevant to this Complaint, Lake Shore was a commodity pool operator ("CPO") and commodity trading advisor ("CTA") Member of NFA. As such, Lake Shore was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.

BACKGROUND

2. Lake Shore has been a CPO/CTA Member of NFA since January 17, 2007. NFA records indicate that Lake Shore's headquarters are in Hamilton, Bermuda. Philip J. Baker ("Baker") was listed as a principal of the firm and was identified as Lake Shore's General Partner.

3. On June 22, 2007, NFA issued a Member Responsibility Action ("Initial MRA") against Lake Shore because Lake Shore failed to cooperate in an NFA investigation by failing to produce books and records and other information that NFA required in order to determine the nature of Lake Shore's business, the identities of its customers and pool participants and the value of their investments, the amount and location of assets under management and the accuracy of performance information featured on Lake Shore's website. The Initial MRA prohibited Lake Shore from soliciting or accepting any new funds and limited its trading to the liquidation of existing positions. In addition, Lake Shore was prohibited from disbursing funds without prior approval from NFA.
4. On August 3, 2007, NFA issued an Amended MRA against Lake Shore, suspending its NFA membership and further restricting its activities in regard to soliciting, accepting, disbursing and transferring funds. The Amended MRA was issued because, after the issuance of the Initial MRA, NFA determined that profitable performance information featured on Lake Shore's website was fraudulent in that it featured positive rates of return for its pools when, in fact, they had lost approximately \$29 million in futures trading. On August 6, 2007, NFA issued a Second Amended MRA against Lake Shore which continued the Initial MRA and Amended MRA in force and updated and expanded certain information that was set out in them.
5. The Commodity Futures Trading Commission ("CFTC" or "Commission") filed a complaint against Baker and several entities, including Lake Shore, in the United States District Court for the Northern District of Illinois on June 26, 2007. The CFTC complaint alleged, among other things, that Lake Shore violated the

Commodity Exchange Act and CFTC regulations by refusing to make its books and records available for inspection and by being unable or unwilling to provide required information about its pool participants and trading performance. The complaint also alleged that Lake Shore's principals made several inconsistent statements concerning assets in the pools and managed accounts, Lake Shore's ownership, U.S. investors in the pools, and the location of its books and records.

6. Pursuant to the CFTC's action, the Honorable Blanche M. Manning issued an *ex parte* statutory restraining order freezing Lake Shore's assets, prohibiting Lake Shore from disposing of documents and from refusing to permit the CFTC to inspect its books and records. On October 16, 2007, Judge Manning appointed a receiver to collect Lake Shore's assets for the purpose of ultimately distributing funds to Lake Shore's clients. Judge Manning also granted CFTC motions for default judgments against most of the entities on April 24, 2008 and against Baker on September 19, 2008. Baker was permanently enjoined from, among other things, committing fraud relative to commodity futures trading and engaging in commodity futures trading.

APPLICABLE RULES

7. 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 commodity futures customer.
8. 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.
9. NFA Compliance Rule 2-5 provides 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. Each Member and Associate shall comply with any order issued by the Executive Committee, the Membership Committee, the Business Conduct Committee, the Appeals Committee or any NFA hearing or arbitration panel.

10. 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.
11. NFA Compliance Rule 2-29(b)(2) provides 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 if the omission makes the promotional material misleading.

COUNT I

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

12. The allegations contained in paragraphs 1 through 6 and 9 are realleged as paragraph 12.
13. Full and prompt cooperation in an NFA inquiry, in part, requires Members to provide NFA with unfettered access to documents and other information required by NFA during the course of any inquiry in a complete and prompt manner and without engaging in dilatory and/or obstructive behavior.
14. Lake Shore's website had a password protected area that provided access to information including pool participant lists, managed accounts and individual account information. As part of its inquiry, NFA required Lake Shore to provide NFA with access to the information in the protected area of the website. In addition, NFA provided a letter to Lake Shore on June 14, 2007 requiring the firm

to provide specified information and documents to NFA by noon on Tuesday, June 19, 2007, so as to facilitate NFA's review of the firm.

15. Lake Shore failed to give full and prompt cooperation to NFA relative to its password protected website in that, although Lake Shore provided NFA with a password to the protected website information on June 15, 2007, the password was revoked on June 19, 2007.
16. Further, Lake Shore failed to give full and prompt cooperation to NFA relative to its password protected website in that a Lake Shore principal explained the password revocation as a reaction to concerns about Swiss and international laws regarding privacy. This was despite the facts that Lake Shore had agreed to make its books and records available to NFA within 72 hours of notice when it applied as a foreign applicant for NFA membership and it had also certified that it was not subject to any blocking, privacy or secrecy laws that created an obstacle to full record production.
17. Lake Shore failed to give full and prompt cooperation to NFA in that on June 19, 2007, NFA sent a letter to Lake Shore, with a copy to Baker, reiterating NFA's demand for required information and noting Lake Shore's obligation to give full and prompt cooperation to NFA. Later that same afternoon, NFA received a response from the Lake Shore principal that it had been dealing with in Chicago, a copy of which he sent to Baker, indicating that Baker owned 100% of Lake Shore. The response stated further that, "I have no ownership interest or executive authority in Lake Shore Asset Management and, therefore, cannot authorize the release of information you require."

18. Lake Shore failed to give full and prompt cooperation to NFA in that it informed NFA that the firm would not provide any information related to offshore accounts or pools and would only provide information related to what the firm purported to be the single U.S. client who was invested in LS Fund IV U.S. In reality, Lake Shore did not provide NFA with any additional information about its purportedly sole U.S. customer after the brief time that NFA had access to the protected area of the firm's website.
19. On June 20, 2007, Lake Shore told NFA that a company representative was planning to fly to Geneva to meet with Lake Shore's attorney to discuss NFA's request for documents and information and that the firm would inform NFA of what it planned to do by the close of business on June 21st. NFA again reminded Lake Shore that Lake Shore's failure to respond in any substantive way was unacceptable and that the firm needed to provide the required information immediately.
20. After the June 20th conversation with Lake Shore, NFA had several telephone conversations with a lawyer named Alexandre Schwab ("Schwab"), who represented Lake Shore and who was located in Geneva, Switzerland. Schwab indicated that he had a meeting scheduled in Geneva with Baker on Thursday, June 21st, at 9 a.m. Geneva time to discuss the international legal ramifications, if any, of providing the information requested in NFA's June 14th letter. Schwab asked for more time to consider NFA's request and told NFA that he would communicate his clients' plans for a response on Thursday, June 21st before noon CDT. NFA informed Schwab at that time that NFA planned to proceed with an emergency action against Lake Shore unless the firm made a good faith effort

to comply with NFA's demands for information. Schwab said that he would discuss it with his clients, but subsequently informed NFA that his clients were unavailable.

21. Lake Shore failed to give full and prompt cooperation to NFA in that neither Lake Shore nor anyone acting on its behalf provided NFA with the information required in NFA's letter of June 14th and during the course of subsequent discussions involving the contents of that letter.
22. Lake Shore's failure to cooperate promptly and fully in NFA's inquiry left NFA unable to verify the nature of Lake Shore's business and the identities of its customers and pool participants and the value of their investments. Further, NFA was unable to verify the amount and location of assets under management and the accuracy of performance information featured on Lake Shore's website.
23. By reason of the foregoing acts and omissions, Lake Shore is charged with violations of NFA Compliance Rule 2-5.

COUNT II

VIOLATION OF NFA COMPLIANCE RULE 2-2(f): PROVIDING FALSE INFORMATION TO NFA.

24. The allegations contained in paragraphs 1 through 6 and 8 are realleged as paragraph 24.
25. The willful submission of false or misleading information to NFA includes, in part, the submission of materially conflicting information to NFA by a Member and individuals who are authorized to speak on behalf of the Member without taking appropriate steps to resolve the material conflicts.
26. On June 14, 2007, a Lake Shore principal represented to NFA that the total of assets under management by Lake Shore was approximately \$1 billion.

27. On July 2, 2007, NFA staff participated in a teleconference with, among others, Baker and attorneys in Chicago and Geneva, Switzerland who represented Lake Shore and Baker. During that teleconference, Baker also represented that Lake Shore had approximately \$1 billion in assets under management. Baker indicated that the firm also had "direct managed accounts", but that none were at Man Financial London ("Man") or Lehman Brothers London ("Lehman").
28. A Lake Shore document entitled, "Assets Under Management" reported that, as of June 11, 2007, Lake Shore had total assets under management as \$1.05 billion, with various Lake Shore funds comprising just over \$290 million of that amount and the managed accounts comprising almost \$760 million.
29. Contrary to representations made to NFA by Lake Shore and its principals, information on Lake Shore's password protected website reported that assets for all Lake Shore funds and managed accounts totaled \$466,720,761, which was less than half of the amount claimed in Lake Shore's representations to NFA that Lake Shore had approximately \$1 billion under management.
30. On June 14, 2007, a Lake Shore principal represented to NFA that Lake Shore operated five funds at that time, all of which were organized offshore. They were identified as Lake Shore Alternative Financial Asset Funds I, II, III, IV and IV-U.S. (collectively, the "Funds"). He added that Lake Shore had only recently formed the U.S. Fund, which was intended for U.S. investors and represented that none of the Funds had participants who were U.S. citizens or who were domiciled in the U.S. Lake Shore represented further that the Lake Shore Funds had trading accounts with Man, Lehman and Fimat London ("Fimat"). Later that day, the Lake Shore principal changed his earlier representation that none of the Funds had any

U.S. investors and represented that LS Fund IV U.S. had one U.S. investor, who was from New York and had invested \$1 million.

31. Information set out on Lake Shore's password protected website contradicted Lake Shore's initial representation that it had no U.S. customers and later representation that it had one U.S. customer in that the protected website reflected that Lake Shore had at least ten U.S. customers.
32. Lake Shore never provided supporting documentation or specific information about any direct managed accounts to NFA and NFA has only been able to identify a single Lake Shore direct managed account. It was held at Lehman and had a value of about \$2,000,000. The fact that this account existed at Lehman was contrary to Baker's representation that no such accounts were held at that firm.
33. Lake Shore willfully submitted false or misleading information to NFA in that the firm and its principals provided materially conflicting information to NFA regarding assets under management by the firm, the number of U.S. participants in the Funds and the location of managed accounts without taking appropriate steps to resolve the material conflicts.
34. By reason of the foregoing acts and omissions, Lake Shore is charged with violations of NFA Compliance Rule 2-2(f).

COUNT III

VIOLATION OF NFA COMPLIANCE RULES 2-2(a), 2-29(b)(1) and 2-29(b)(2): USE OF FALSE AND MISLEADING PROMOTIONAL MATERIAL.

35. The allegations contained in paragraphs 1, 7, 10 and 11 are realleged as paragraph 35.

36. Lake Shore's website at www.lakeshorefunds.com promoted the firm as operating the Funds and managing customer accounts. A press release included on the site touted a 13-year performance history for Lake Shore's "flagship" program of a 28.27% compounded annual return.
37. A January 29, 2007 press release on Lake Shore's website announced the launch of the Lake Shore Alternative Financial Asset Fund IV ("Lake Shore IV"). The release also referred to Lake Shore Funds I, II and III and claimed that its flagship "Program 1" had a 13-year history and that it had generated a 28.27% compound annual return. Lake Shore's website also contained positive performance and other information about seven other funds offered by the firm. In fact, none of the seven funds reflected any negative performance for any given year.
38. Although Lake Shore failed to produce brokerage statements required of it by NFA to support reported the performance information claimed by Lake Shore for the firm's Funds, NFA did obtain brokerage statements from other sources for Fund accounts held at Man, Lehman, Fimat and Sentinel Management Group, Inc., which were the only brokerage firms identified by Lake Shore as doing business with Lake Shore.
39. The trading records for Lake Shore's accounts revealed that, contrary to the consistent rosy profits reported by Lake Shore in its communications with the public, they actually suffered substantial and consistent losses. The four active Man accounts lost \$25 million between February 2006 and May 2007 and were unprofitable for the calendar years 2002-04 and from January through May 2007. The two Lake Shore accounts at Lehman lost approximately \$4.4 million between October 2006 and June 2007 and the one account at Fimat lost \$260,000 during

May 2007, its only active month. In total, from February 2002 through June 2007, the Lake Shore Fund accounts at Man, Lehman and Fimat lost approximately \$29 million.

40. Lake Shore distributed other promotional material and information about the performance of its Funds that contained material discrepancies with the truth. For example, a Lake Shore Power Point presentation stated, "Impressive results i.e. LS I-42 'Up' versus 8 'Down' months since Jan 2003" The trading records for Lake Shore's trading activity and performance paints a dramatically different picture than that glowing portrayal. Specifically, the trading results for a Lake Shore Alternative Financial Asset Ltd. account at Man, which is the only Lake Shore account that had traded since January 2003, reflected that the account had only 17 "Up" months and that it had 33 "Down" months for the period. Additionally, the account had lost approximately \$23.4 million since 2002.
41. In addition, the December 31, 2006 Lake Shore IV Fact Sheet used by Lake Shore was deceptive and misleading in that, despite the consistent overall losing performance of the Funds, the Fact Sheet included monthly returns, which on an annualized basis equaled positive returns of 55.5% in 2002, 37.02% in 2003, 33.8% in 2004, 40.3% in 2005 and 21.4% in 2006.
42. By reason of the foregoing acts and omissions, Lake Shore is charged with violations of NFA Compliance Rules 2-2(a), 2-29(b)(1) and 2-29(b)(2).

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.

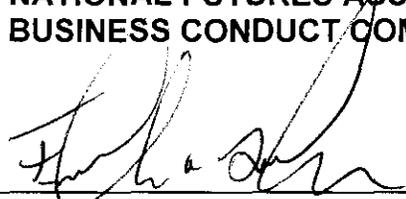
The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act.

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**

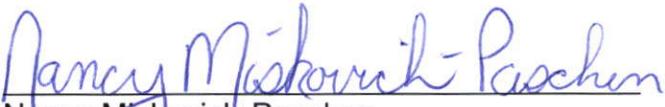
Dated: 3-16-09

By: 
Chairperson

AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on March 16, 2009, I served a copy of the attached Complaint, by sending such copy in the United States mail, first-class delivery, and by overnight mail, in envelopes addressed as follows:

Lake Shore Asset Management Limited
Milner House
18 Parliament Street
P. O. Box 1561
Hamilton, Bermuda
Attn: Philip Baker, Director



Nancy Miskovich-Paschen

Subscribed and sworn to before me
on this 16th day of March 2009.



Notary Public

