

NATIONAL FUTURES ASSOCIATION  
BEFORE THE  
BUSINESS CONDUCT COMMITTEE

FILED

MAY 19 2009

In the Matter of: )  
)  
WEXTRADE COMMODITY )  
MANAGERS LLC )  
(NFA ID #372119), )  
)  
and ) NFA Case No. 09-BCC-009  
)  
PAUL J. ADRIAN )  
(NFA ID #8714), )  
)  
Respondents. )

NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING

**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 and Registration 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 ("Committee") issues this Complaint against WexTrade Commodity Managers LLC ("WCM") and Paul J. Adrian ("P. Adrian").

**ALLEGATIONS**

**JURISDICTION**

1. At all times relevant to this Complaint, WCM was a commodity pool operator ("CPO") Member of NFA. As such, WCM 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, P. Adrian was a principal and associated person ("AP") of WCM and an Associate NFA Member. As such, P. Adrian was

and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof. WCM is liable for violations of NFA Requirements committed by P. Adrian during the course of his activities on behalf of WCM.

### **BACKGROUND**

3. WCM is located in Chicago, Illinois and has been a registered CPO NFA Member since September 19, 2006. WCM's principals as reflected on NFA's Online Registration System are an entity named WexTrust Capital LLC ("WTC"), managing member P. Adrian, chief executive officer Steve Byers ("Byers") and chief compliance officer Ralph G. Sabine ("Sabine"). P. Adrian is the only principal who is also an AP of WCM. WTC, P. Adrian and Byers are each reported to own 10% or more of WCM. Byers is also a part owner of WTC.
4. On August 11, 2008, Byers and another owner of WTC named Joseph Shereshevsky ("Shereshevsky"), who has never had any disclosed affiliation with an NFA Member, were arrested and charged with conspiracy to commit securities and mail fraud. That case is currently pending in U.S. District Court in Manhattan, where it is alleged that they defrauded investors by diverting more than \$100 million raised in private placements to unauthorized uses. The Securities and Exchange Commission ("SEC") brought civil charges against the two men and several entities in a related complaint and obtained an asset freeze and the appointment of a receiver in its case.
5. Due to the arrest of Byers and Shereshevsky, as well as the SEC's Complaint, NFA initiated an audit of WCM on August 12, 2008. During the course of the audit NFA auditors discovered serious violations of NFA Requirements involving

the mishandling of pool funds, the use of deceptive promotional material and failure to list individuals who were required to be identified as principals. These widespread and serious violations illustrate a failure on the part of WCM and P. Adrian to supervise WCM's operations.

#### **APPLICABLE RULES**

6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. NFA Compliance Rule 2-29(e), in pertinent part, requires that, prior to its first use, all promotional material used by NFA Members shall be reviewed and approved,

in writing, by an officer, general partner, sole proprietor, branch office manager or other supervisory employee other than the individual who prepared such material.

12. NFA Registration Rule 206(a) provides, in pertinent part, that the sponsor of each individual applying for registration as an AP of that sponsor must file a Form 8-R on behalf of the applicant, pay the required registration fee and file the fingerprints of the applicant.
13. NFA Registration Rule 208(a)(2)(B) provides, in pertinent part, that within 20 days after any individual becomes a principal of an applicant or registrant subsequent to the filing of Form 7-R in accordance with NFA Registration Rule 204, the applicant or registrant must comply with the provisions of NFA Registration Rule 204(a)(2) for each new principal.

#### COUNT I

#### **VIOLATION OF NFA COMPLIANCE RULE 2-13(a): COMMINGLING POOL ASSETS; RECEIPT OF FUNDS IN UNAUTHORIZED NAMES OR ACCOUNTS; AND FAILURE TO PROVIDE REQUIRED INFORMATION.**

---

14. The allegations contained in paragraphs 1, 3, 4 and 8 are realleged as paragraph 14.
15. CFTC Regulation 4.20(c) provides that no CPO may commingle the property of any pool that it operates or that it intends to operate with the property of any other person.
16. WCM operated a pool named the Wextrade Diversified Futures Fund I LLC ("Wdff").
17. Throughout the time that WCM was accepting subscriptions for the Wdff pool, WCM commingled Wdff participants' contributions with WTC accounts and used them in a manner that was not provided for in the pool's private placement

memorandum ("PPM"). Between April and August 2007, prior to WDFE breaking escrow, a total of \$1.747 million was wired between WDFE accounts and WTC accounts at Wachovia Bank ("Wachovia").

18. Some of WDFE/WTC wire transfer details referred to the transactions as a "loan". For example, the largest transfer from WDFE to WTC was for \$1,000,000 on April 23, 2007. According to wire transfer details, the transfer involved a "loan" and was made per instructions given by Shereshevsky and Byers.
19. Another transfer for \$275,000 occurred on July 18, 2007. The account transfer detail noted that the transaction was a "loan" to "help fund the Hammond Investor's Property Closing."
20. Yet another transfer was made from the WDFE to WTC for \$472,000 on August 13, 2007. Wire details reflected that transfer was ordered by Shereshevsky, "to help fund Aug 15th Payroll Chicago-Norfolk."
21. In addition, WCM commingled the property of one of its pools with the property of other pools that it operated. For example, on April 1, 2008, \$250,000 was wired from WCM's Wextrade Principal Offshore Fund 1 Ltd. pool account at Chase Bank to WCM's Wextrade Diversified Offshore Fund 1 Ltd. pool's bank account. This transfer and others like it were in conflict with the pools' investment strategy and representations made by the firm. Specifically, P. Adrian and Susan Reyes ("Reyes"), WCM's bookkeeper, told NFA that WCM's four feeder pools maintained cash accounts and invested solely in WCM's Master Fund, and that they did not invest in one another. Moreover, each pool's PPM states that the only investment vehicle that the pools would use was the Master Fund.

22. CFTC Regulation 4.20(b) provides that all funds, securities or other property received by a CPO from an existing or prospective pool participant for the purchase of an interest or as an assessment (whether voluntary or involuntary) on an interest in a pool that it operates or that it intends to operate must be received in the pool's name.
23. Certain funds received for investments in the Wdff and Wextrade Principal Protected I LLC ("WPPF") pools were not received in the pools' names. Rather, they were received in WTC's name or in an incorrect pool account. For example, a \$250,000 Treasurer's check, dated January 3, 2007, bore the name "Stephen Costa" ("Costa"), on the check's memo line. Costa was the first investor in the Wdff pool. Although the check was made payable to "Wextrust Capital," a Wachovia bank statement for the Wdff pool showed a \$250,000 deposit on January 4, 2007, with a transfer of those funds out of the account the next day to Wdff's money market account.
24. Further, DNA Limited Partnership ("DNA") was a participant in WCM's Wdff and WPPF pools. A \$500,000 DNA check, dated April 27, 2007, was made payable to the WPPF pool, but a notation on a photocopy of the check indicated that the \$500,000 was to be divided, with \$250,000 going to the Wdff and \$250,000 to the WPPF. The funds hit the WPPF escrow account at Wachovia on May 1, 2007, but the \$250,000 intended for Wdff was not transferred to Wdff's account until August 8, 2007, more than three months after they were received.
25. Three checks totaling \$200,000 were made payable to WTC and were designated as being for the benefit of an investor named August Fowler. Two checks were dated June 18, 2007 and the third check was dated June 27, 2007.

A notation on the photocopies indicates that \$100,000 was designated for the "Diversified Futures Fund" (i.e., Wdff), while the remaining \$100,000 was designated for investment in a non-pool WTC enterprise. WTC did not transfer \$100,000 to the Wdff escrow account until July 5, 2007, more than two weeks after the funds were received.

26. Wdff participant Vivian Yu ("Yu"), as trustee of the Vivian Yu Living Trust, wrote a check for \$100,000 to the WPPF pool on August 10, 2007 and signed the Wdff subscription agreement on the same day. Although she was a participant in the Wdff fund, Yu's check was deposited into the WPPF escrow account on August 14th. Furthermore, her funds were not transferred to the Wdff escrow account until August 27, 2007.
27. City First Foundation signed a WPPF subscription agreement on July 6, 2007 and that same day transferred \$1,100,000, of which \$220,000 was designated for an investment in the WPPF, to a WTC operating account. However, the funds were not moved from the WTC account to the WPPF account until August 23rd, almost six weeks after they were received.
28. WCM reported that the WPPF pool was entitled to certain relief pursuant to CFTC Regulation 4.7.
29. CFTC Regulation 4.7(b)(2), in pertinent part, requires that statements for pools claiming relief under CFTC Regulation 4.7 be signed and affirmed in accordance with CFTC Regulation 4.22(h) and prepared and distributed to pool participants no less frequently than quarterly within 30 calendar days after the end of the reporting period. The statement must be presented and computed in accordance with generally accepted accounting principles and indicate the net asset value

("NAV") of the exempt pool as of the end of the reporting period; the change in NAV from the end of the previous reporting period; and the NAV per outstanding unit of participation in the exempt pool as of the end of the reporting period.

30. The May 31, 2008 WPPF account statement was missing information required by CFTC Regulation 4.7(b)(2), including the required oath or affirmation, the change in NAV for the pool, the ending NAV for the pool, and the NAV per unit.
31. By reason of the foregoing acts and omissions WCM is charged with violations of NFA Compliance Rule 2-13(a).

## COUNT II

### **VIOLATION OF NFA COMPLIANCE RULES 2-2(a), 2-29(b)(1), 2-29(b)(2) AND 2-29(e): USE OF DECEPTIVE PROMOTIONAL MATERIAL AND FAILURE TO REVIEW PROMOTIONAL MATERIAL PRIOR TO USE.**

32. The allegations contained in paragraphs 1, 3, 4, 6 and 9 through 11 are realleged as paragraph 32.
33. WCM used a PPM for the WDFP pool that was deceptive and misleading in that it failed to disclose all uses of pool funds. In particular, it did not discuss the wire transfers to WTC or the potential use of pool funds as loans. Furthermore, the PPM failed to include all entities with which the pool did business and included entities with which it did not transact any business. For example, the PPM listed Fortis Clearing Americas LLC ("Fortis") and Iowa Grain as its clearing brokers. Although the pool's accounts did use Fortis, it never used Iowa Grain. In addition, during the life of the WDFP pool, WCM also used MF Global, Inc., Avidus Trading Group LLC ("Avidus"), and exempt foreign futures commission merchant Newedge Group UK Branch as clearing brokers, but failed to identify those firms in the PPM.

34. The WDFP PPM failed to disclose several other relationships and conflicts of interest which caused the promotional material to be misleading. In particular, although the PPM identified an individual named Mark Adrian ("M. Adrian") as an advisor to WDFP and included a one-page discussion of his background and affiliations, it failed to disclose that he was P. Adrian's brother or that he had current relationships with firms that were doing business with WCM, specifically, Nala LLC ("Nala") and Avidus. It also failed to disclose that Nala is an NFA Member CPO/commodity trading advisor and introducing broker that is owned by M. Adrian or that it advised WCM's funds and introduced the pools' accounts to Fortis.
35. The WDFP pool's June 30, 2008 monthly newsletter was deceptive and misleading in that it contained several misstatements of fact. For example, it reported that the WDFP's assets under management were \$31,515,000 as of June 30, 2008 without disclosing that this figure represented a nominal amount. In addition, the newsletter identified McGladrey & Pullen as the WDFP's only "Auditor", when, in reality, McGladrey & Pullen did not audit any of WCM's pools.
36. No WCM supervisory personnel reviewed and approved the firm's promotional material prior to its first use.
37. By reason of the foregoing acts and omissions WCM is charged with violations of NFA Compliance Rules 2-2(a), 2-29(b)(1), 2-29(b)(2) and 2-29(e).

### COUNT III

#### **VIOLATION OF NFA REGISTRATION RULES 206(a) AND 208(a)(2)(B): FAILURE TO REGISTER AN AP AND FAILURE TO LIST A PRINCIPAL.**

38. The allegations contained in paragraphs 1 through 4, 12 and 13 are realleged as paragraph 38.

39. WCM was required to list M. Adrian as a principal of the firm in that M. Adrian exercised a controlling influence over the firm. For example, throughout NFA's audit of WCM, P. Adrian was unable to answer many of NFA's questions and could not provide details regarding the pools' operations. In addition, although Reyes, who was identified in the PPM as a senior investment analyst and who acted as WCM's accountant, was able to answer some of NFA's questions regarding how the firm's books were kept, she was uninformed regarding trading decisions and asset allocation. Both P. Adrian and Reyes routinely referred NFA to M. Adrian for answers to questions that they were unable to respond to. In addition, WCM documents indicated that M. Adrian was responsible for approving NAV Consulting's pool account balances. A WCM PPM also identified M. Adrian and included his biography on a listing of "Key Officers and Principals of Wexford Diversified Futures Fund."
40. WCM was required to list Shereshevsky as a principal of the firm based on his ownership interest in WTC, which in turn owned 10% or more of WCM, and his control over the WDFE and WPPF bank accounts at Wachovia. In fact, although Shereshevsky was a signatory on both of those bank accounts, P. Adrian, who was purported to be WCM's managing member, was not. Some WDFE and WPPF subscription agreements also listed Shereshevsky as "Account Officer" for these pools.
41. NFA Registration Rule 204(a)(2), in pertinent part, requires Members to file a Form 8-R for each new principal, pay a fee and submit each new principal's fingerprints to NFA within twenty days of their becoming principals.

42. WCM failed to comply with the provisions of NFA Registration Rule 204(a)(2) for both M. Adrian and Shereshevsky within twenty days of their becoming principals of the firm in that it failed to file a Form 8-R for M. Adrian and Shereshevsky, failed to pay the required fee and failed to file M. Adrian's and Shereshevsky's fingerprints.
43. Shereshevsky acted in a manner which required his registration as an AP of WCM in that he solicited at least one individual to invest with WCM.
44. WCM failed to file a Form 8-R on behalf of Shereshevsky, failed to pay the required registration fee and failed to file Shereshevsky's fingerprints.
45. By reason of the foregoing acts and omissions, WCM is charged with violations of NFA Registration Rules 206(a) and 208(a)(2)(B).

#### **COUNT IV**

#### **VIOLATION OF NFA COMPLIANCE RULE 2-9(a): FAILURE TO SUPERVISE.**

46. The allegations contained in paragraphs 1 through 4 and 7 are realleged as paragraph 46.
47. WCM and P. Adrian, who was the only WCM principal who was also an AP and Associate NFA Member, were wholly responsible for the diligent supervision of WCM's commodity futures activities.
48. The duty to diligently supervise employees and agents in the conduct of their commodity futures activities for or on behalf of the Member requires, in part, diligent supervision so as to insure that the Member complies with CFTC and NFA requirements governing the activities of CPOs, diligent supervision so as to insure that the Member does not use deceptive and misleading promotional material and diligent supervision so as to insure that the Member complies with

NFA Requirements governing the registration of APs and the disclosure of principals.

49. The allegations contained in paragraphs 15 through 30, paragraphs 33 through 36 and paragraphs 39 through 44 are realleged as paragraph 49.
50. WCM and P. Adrian failed in their duty to diligently supervise employees and agents in the conduct of their commodity futures activities for or on behalf of WCM in that they failed to insure that WCM complied with CFTC and NFA requirements governing the activities of CPOs, failed to insure that WCM did not use deceptive and misleading promotional material and failed to insure that WCM complied with NFA Requirements governing the registration of APs and the disclosure of principals.
51. By reason of the foregoing acts and omissions, WCM and P. Adrian 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.

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](mailto: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, the Committee 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.

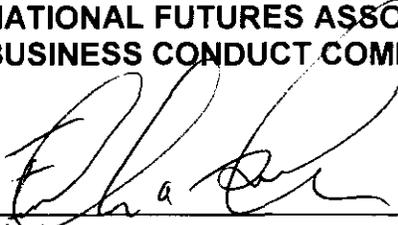
The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act.

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: 5-19-09

By:   
Chairperson

**AFFIDAVIT OF SERVICE**

I, Nancy Miskovich-Paschen, on oath state that on May 19, 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:

Paul J. Adrian  
405 Suffolk Lane  
Oakbrook, IL 60521

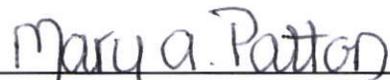
and also by regular mail, first-class delivery and messenger service to:

Jeffry M. Henderson, Esq.  
Henderson & Lyman  
175 West Jackson Boulevard  
Suite 240  
Chicago, IL 60604

Wextrade Commodity Managers LLC  
333 West Wacker Drive  
Suite 1600  
Chicago, IL 60606  
Attn: Paul J. Adrian

  
\_\_\_\_\_  
Nancy Miskovich-Paschen

Subscribed and sworn to before me  
on this 19th day of May 2009.

  
\_\_\_\_\_  
Notary Public

