

FILED

JUN 24 2009

**NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE**

**NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING**

In the Matter of:)
)
IFINIX FUTURES, INC.) NFA Case No. 09-BCC-017
(NFA ID #312871),)
)
Respondent.)

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 ("BCC") issues this Complaint against IFINIX Futures, Inc. ("IFINIX").

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, IFINIX was an NFA Member and introducing broker ("IB") located in Plainview, New York.

APPLICABLE RULES

2. NFA Financial Requirements Section 5(a) requires, in pertinent part, that an IB maintain adjusted net capital ("ANC") of at least \$45,000.
3. NFA Compliance Rule 2-10(a) provides, in pertinent part, that each Member shall maintain adequate books and records necessary and appropriate to conduct its business including, without limitation, the records required to be kept under Commodity Futures Trading Commission ("CFTC") Regulations 1.18 and 1.32 through 1.37.

4. NFA Financial Requirements 5(c) requires, in pertinent part, that an IB file with NFA any document or notice it is required to provide to the CFTC under CFTC Regulations 1.10, 1.12, 1.16, or 1.17.
5. NFA Compliance Rule 2-9(c) provides, in pertinent part, that each IB Member shall develop and implement a written anti-money laundering ("AML") program approved in writing by senior management reasonably designed to achieve and monitor the Member's compliance with the applicable requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder. A Member's AML program shall, among other things, provide for independent testing for compliance with the program and provide ongoing training for appropriate personnel.

BACKGROUND

6. IFINIX was previously operated as Pro Active Futures, Inc. ("Pro Active") and has been an NFA Member and IB since October 2001. In September 2008, the firm was purchased by IFINIX Corporation.
7. When IFINIX was operated as Pro Active, it was the subject of a BCC Complaint issued in April 2007. The Complaint alleged that the firm failed to maintain its required minimum ANC and failed to file telegraphic notice of this failure. The Complaint further alleged, among other things, that the firm failed to conduct annual AML training for its employees and failed to conduct an annual independent review of its AML program.
8. The 2007 Complaint was resolved through a settlement under the terms of which the firm agreed to pay a fine of \$10,000.

9. Although under new ownership, IFINIX continued to operate in the same manner as it had before, retaining much of the same staff, back office operations, and customers.
10. In November 2008, NFA commenced an examination of IFINIX. During this examination NFA found that IFINIX had committed violations of NFA's AML and financial requirements similar to those charged in the 2007 Complaint.

COUNT I

VIOLATION OF NFA FINANCIAL REQUIREMENTS SECTION 5(a) AND NFA COMPLIANCE RULE 2-10: FAILURE TO MAINTAIN REQUIRED MINIMUM ANC AND ADEQUATE BOOKS AND RECORDS.

11. The allegations contained in paragraphs 1 through 3 are realleged as paragraph 11.
12. IFINIX failed to properly account in its financial records for the firm's security deposit held at the futures commission merchant ("FCM") to whom IFINIX introduced customers.
13. Additionally, the proceeds of a subordinated loan from one of the principals of IFINIX were never transferred to an account in the name of the firm, but rather were kept in the principal's personal account. Accordingly, IFINIX was improperly accounting for the proceeds of the loan as a current asset of the firm.
14. As a result of the above deficiencies, IFINIX was below the required minimum ANC of \$45,000 from September 24, 2008 through December 2, 2008.
15. IFINIX also failed to maintain many required financial records, including current bank and broker statements.
16. By reason of the foregoing acts and omissions, IFINIX is charged with violations of NFA Financial Requirements Section 5(a) and NFA Compliance Rule 2-10.

COUNT II

VIOLATION OF NFA FINANCIAL REQUIREMENTS SECTION 5(c): FAILURE TO FILE NOTICE WITH NFA

17. The allegations contained in paragraphs 1 and 4 are realleged as paragraph 17.
18. CFTC Regulation 1.12(a)(1) provides, in pertinent part, that if an IB knows or should know that its ANC is at any time less than that required it must immediately give telephonic notice, to be confirmed in writing by facsimile notice, that its ANC is less than required.
19. CFTC Regulation 1.12(c) provides, in pertinent part, that if at any time an IB fails to make or keep current books and records it must provide facsimile notice of such fact on the same day.
20. NFA Financial Requirements Section 5(c) provides, in pertinent part, that a Member IB required to give notice to the CFTC under CFTC Regulation 1.12 must also give notice to NFA.
21. IFINIX failed to provide notice that it was under its required minimum ANC and that it had failed to make and keep current books and records.
22. By reason of the foregoing acts and omissions, IFINIX is charged with violations of NFA Financial Requirements Section 5(c).

COUNT III

VIOLATION OF NFA COMPLIANCE RULE 2-9(c): FAILURE TO DEVELOP AND IMPLEMENT AN ADEQUATE AML PROGRAM.

23. The allegations contained in paragraphs 1 and 5 are realleged as paragraph 25.
24. NFA's Interpretive Notice entitled "FCM and IB Anti-Money Laundering Program" ("AML Interpretive Notice"), which expands upon the requirements of NFA Compliance Rule 2-9(c), provides that an IB must provide for independent testing

- on an annual basis – of the adequacy of its AML program.
25. In 2008, IFINIX failed to have an annual independent audit of its AML program conducted in a timely manner. After conducting an audit of its AML program on March 20, 2007, IFINIX waited over eighteen months before conducting another audit of its AML program on October 20, 2008.
 26. The AML Interpretive Notice also provides that an IB must present ongoing training with regard to AML for all appropriate personnel annually and should maintain records to evidence compliance with this requirement.
 27. IFINIX failed to conduct annual training for its employees in 2007.
 28. By reason of the foregoing acts and omissions, IFINIX is charged with violations of NFA Compliance Rule 2-9(c).

PROCEDURAL REQUIREMENTS

ANSWER

You must file a written Answer to the Complaint with NFA within thirty 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
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.

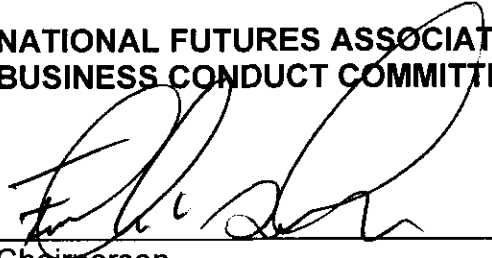
The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Act. Respondents in this matter who apply for registration in any new capacity, including as an associated person with a new sponsor, may be denied registration based on the pendency 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: 06/24/09

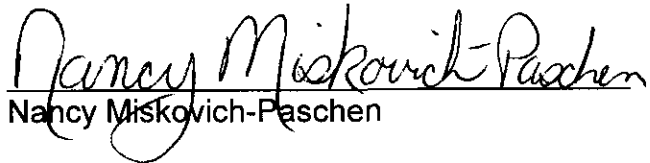
By: 
Chairperson

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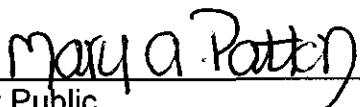
AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on June 24, 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:

IFINIX Futures, Inc.
255 Executive Drive
Suite 410
Plainview, NY 11803
Attn: Richard Dank, President


Nancy Miskovich-Paschen

Subscribed and sworn to before me
on this 24th day of June 2009.


Notary Public

