

FILED

JUN 24 2009

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

NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING

In the Matter of: )  
)  
CAPITAL BLU MANAGEMENT LLC )  
(NFA ID #381906), ) NFA Case No. 09-BCC-018  
)  
Respondents. )

**COMPLAINT**

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association ("NFA"), and having 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 issues this Complaint against Capital Blu Management LLC ("Capital Blu").

**ALLEGATIONS**

**JURISDICTION**

1. Capital Blu is an NFA commodity trading advisor Member located in Melbourne, Florida, which also maintained offices in Naples, Florida.

**APPLICABLE RULES**

2. 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.

## COUNT I

### **VIOLATION OF NFA COMPLIANCE RULE 2-5: FAILING TO COOPERATE FULLY AND PROMPTLY WITH NFA.**

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3. The allegations contained in paragraphs 1 and 2 are realleged as paragraph 3.
4. Capital Blu operated a commodity pool called "CBM FX Fund LP" ("the Fund"), which appears to have traded forex and forex options. Capital Blu filed a claim for an exemption under Commodity Futures Trading Commission ("CFTC") Regulation 4.13(a)(4) with regard to its operation of the Fund.
5. On September 12, 2008, NFA was contacted by a former employee and customer of Capital Blu, who said that he had invested in two funds operated by Capital Blu.
6. This individual told NFA that he had been solicited to invest with Capital Blu by Blayne Davis, a listed principal, associated person ("AP"), and part owner of Capital Blu. He said that he had received account statements indicating that his investments in the funds were profitable, but that he was concerned about his investments because of a call he had recently received from Blayne Davis who told him that the other owners of Capital Blu had gone to Capital Blu's Naples office, in the middle of the night, and removed all of the files. He said that after the phone call from Blayne Davis, he called Capital Blu's Melbourne office to inquire about the status of his investments and was told that, despite what his statements said, his investments had actually lost money, perhaps as much as 75%.
7. NFA then attempted to contact Capital Blu at the telephone number it had provided to NFA but the number appeared to have been disconnected. On

September 15, 2008, NFA staff went to the Melbourne offices of Capital Blu. When NFA arrived at the offices none of the principals of the firm was present. However, NFA staff was able to speak by phone with one of the firm's principals, Damien Bromfield ("Bromfield"). NFA staff also sent Bromfield a fax with a list of documents that it requested for him to produce, including broker statements, participation agreements for the Fund, monthly account statements sent to participants, and a list of all futures commission merchants ("FCMs") and introducing brokers with which Capital Blu conducted business.

8. NFA staff asked Bromfield where they could contact Blayne Davis, who was the only listed principal/AP of Capital Blu. Bromfield told NFA that Blayne Davis worked in Naples, Florida and provided a telephone number where he could be reached. NFA staff then contacted Blayne Davis by phone. Blayne Davis represented that his employment with Capital Blu had been terminated several weeks earlier.
9. After the telephone conversation with Blayne Davis, NFA staff received a call from Bromfield who indicated that Donovan Davis, another principal and owner of the firm, would be in the Melbourne office to meet with NFA staff later that day. When Donovan Davis arrived at Capital Blu's offices, NFA asked him where the firm's financial records were and he said that they were at the firm's Orlando, Florida office. He said that he was unsure how many accounts Capital Blu managed, how many participants were in the Fund, or the approximate value of the Fund.

10. NFA asked Donovan Davis about Blayne Davis. He said that in late August he became aware that Blayne Davis had set up his own company. He said that after consulting with an attorney, he and Bromfield decided to terminate Blayne Davis and had all of the files from the Naples office moved to Orlando. Donovan Davis also told NFA that after terminating Blayne Davis, he attempted to gather information from the FCMs where the Fund had accounts. He said that when he reviewed documents from one of the FCMs, he saw that funds had been transferred to Blayne Davis' company. Donovan Davis also told NFA staff that he believed that the approximate value of the Fund as of August 31, 2008 was \$16.9 million. However, he said that he was unsure where all of the Fund's monies were being held.
11. Donovan Davis told NFA staff that the firm was in the process of gathering the documents requested by NFA. Later, the firm provided NFA with copies of the firm's articles of organization, a general ledger for the period of June 1, 2008 through September 12, 2008, and account statements from a bank account in the name of Capital Blu from June 1, 2008 through August 31, 2008. NFA reviewed the account statements and noted funds being transferred to and from numerous other banks and brokers as well as to and from the Fund and an entity named FX Blue Management LLC. Additionally, as of August 31, 2008, the account statements indicated a negative balance of approximately \$3,000.
12. Shortly after NFA staff received the bank statements, they received a call from Bromfield who indicated that he was no longer willing to cooperate with NFA in its examination and would not provide any further information to NFA. After this

conversation, employees at Capital Blu's offices told NFA staff that the firm's attorneys requested that NFA staff leave Capital Blu's offices. NFA then sent Bromfield and Donovan Davis an e-mail notifying them that their actions constituted a violation of NFA Compliance Rule 2-5 and that their failure to cooperate could result in a Member Responsibility Action ("MRA") against the firm. Neither Capital Blu nor its principals responded to this e-mail.

13. On September 16, 2008, NFA issued an MRA against Capital Blu for failure to cooperate with NFA in its investigation of the firm's operations. Pursuant to the MRA, Capital Blu was, among other things, suspended from NFA membership and prohibited from disbursing any funds without the prior approval of NFA.
14. In January and February 2009, Bromfield provided NFA with some of the records previously requested by NFA, including a few additional bank statements for Capital Blu. However, to date, Capital Blu has still not produced the bulk of the records requested by NFA, including all of the firm's bank statements, the bank statements for the Fund, a list of FCMs at which customer funds were held, carrying broker statements from FCMs, the monthly account statements sent to participants, or participation agreements for the Fund.
15. On March 23, 2009, the CFTC filed an injunctive action against Capital Blu, Bromfield, Donovan Davis, and Blayne Davis in the U.S. District Court for the Middle District of Florida. As a result of this action, the assets of Capital Blu have been frozen and a temporary receiver has been appointed.
16. By reason of the foregoing acts and omissions, Capital Blu is charged with violations of NFA Compliance Rule 2-5.

## **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](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, 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.

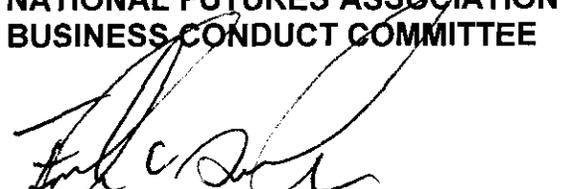
The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act.

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: 06/24/09

By:   
Chairperson

**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:

Capital Blu Management LLC  
709 S. Harbor City Blvd.  
Suite 530  
Melbourne, FL 32901  
Attn: Blayne Davis

  
Nancy Miskovich-Paschen

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

  
Notary Public

