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NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

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

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|---|---|---|
| In the Matter of: | ) | |
| | ) | |
| NETBLACK CAPITAL LLC. | ) | |
| (NFA ID #405361), | ) | |
| | ) | |
| and | ) | NFA Case No. 09-BCC-024 |
| | ) | |
| JOHN FRANCIS NETTO | ) | |
| (NFA ID #317562), | ) | |
| | ) | |
| 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 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 NetBlack Capital LLC ("NetBlack") and John Francis Netto ("Netto").

## ALLEGATIONS

## JURISDICTION

1. At all times relevant to this Complaint, NetBlack was a commodity trading advisor ("CTA") NFA Member located in Las Vegas, Nevada.
2. At all times relevant to this Complaint, Netto was the firm's only disclosed principal and sole registered associated person ("AP"), and an NFA Associate.

## BACKGROUND

3. NetBlack has been an NFA Member CTA since November 2008.

4. Netto is also the AP and principal of M3 Capital LLC ("M3"), an NFA Member introducing broker also located in Las Vegas. Netto operates a number of other unregulated companies, including Sniperscope Live Trading LLC and One Shot One Kill Trading LLC, and often speaks about trading strategies and investment opportunities at various industry seminars and conferences.

## APPLICABLE RULES

5. NFA Compliance Rule 2-6 provides that no person who has been expelled or suspended or is subject to a similar sanction by NFA in a proceeding brought pursuant to Part 3 of NFA's Compliance Rules that temporarily or permanently prohibits the person from NFA membership or affiliation in any capacity with an NFA Member shall hold himself out as a Member in good standing of NFA, or as affiliated with a Member, as the case may be, during the period during which the sanction is in effect. No Member or Associate shall conduct commodity futures or forex business with such a person during the period the sanction is in effect unless authorized by the BCC, Hearing Committee or the Appeals Committee.

6. NFA Compliance Rule 2-29(b)(5) provides, in pertinent part, that no Member or Associate shall use any promotional material which included any specific numerical or statistical information about the past performance of any actual accounts.

## COUNT I

**VIOLATION OF NFA COMPLIANCE RULE 2-6: DOING BUSINESS WITH JES BLACK WHEN HE WAS BARRED FROM NFA MEMBERSHIP.**

7. The allegations contained in paragraphs 1 through 5 are realleged as paragraph 7.

8. NFA reviewed NetBlack's website and noted that the website included the biographies of two individuals – Netto, and an individual by the name of Jes Black ("Black"). Black, who is also known as Jason Black, was listed on the website as a "Strategic Advisor" to NetBlack.

9. Additionally, staff reviewed NetBlack's registration records and noted that the address for NetBlack that was reported to NFA was 300 Park Avenue, Suite 1700 in New York, New York. This was the exact same address of Black Flag Capital Partners LLC ("Black Flag"), a former NFA Member commodity pool operator and CTA for which Black was the sole AP and principal.

10. NFA also discovered a second website purportedly for NetBlack which was similar to the first website reviewed by NFA, as alleged above. This second website identified both Netto and Black as managers of NetBlack and listed Black's phone number as a contact number.

11. Black and Black Flag were named in a previous BCC action alleging, among other violations, that Black Flag and Black provided false and misleading information to NFA; failed to provide an accurate and complete disclosure document; failed to prepare and maintain accurate books and records; failed to cooperate with an NFA audit; and failed to supervise the firm's operations. Black and Black Flag settled that Complaint by agreeing to withdraw from NFA

membership and associate membership and not reapply for NFA membership and associate membership or act as a principal of an NFA Member for a period of thirty months. The Decision in that case became effective on February 13, 2008. Thus, Black was still subject to a bar at the time that NFA reviewed NetBlack's website.

12. NFA interviewed Netto about NetBlack's operations and its relationship with Black. Netto admitted that he was aware of Black's thirty-month membership bar from NFA. However, Netto claimed that Black did not work for NetBlack and has no ownership or financial interest in the firm and receives no compensation. Netto also claimed that the "Black" part of NetBlack did not refer to Black, but instead was a reference to "going for black," which he said is a term he uses for "going for profits."

13. According to Netto, NetBlack utilizes Black's trading strategies and considers Black as a "strategic advisor." Netto also stated that he may "consult" Black on trading decisions, but that he ultimately makes all trading decisions himself.

14. The Interpretive Notice for NFA Compliance Rule 2-6 prohibits an NFA Member from allowing any person barred from NFA to perform any activities for or on the Member's behalf, regardless of whether or not such activities require registration or NFA membership. This prohibition extends to employees, consultants, independent contractors, agents, or unpaid volunteers.

15. As alleged above, NetBlack and Netto allowed Black – during the time he was barred from NFA – to perform activities on their behalf and act as a consultant and advisor to them.

16. By reason of the foregoing acts and omissions, NetBlack and Netto are charged with violations of NFA Compliance Rule 2-6.

## COUNT II

## VIOLATION OF NFA COMPLIANCE RULE 2-29(b)(5): FAILING TO MAINTAIN SUPPORT FOR ITS RATES OF RETURN.

17. The allegations contained in paragraphs 1 through 4 and 6 are realleged as paragraph 17.

18. As part of its investigation of NetBlack, NFA conducted a search for performance information for NetBlack using the PerTrac database. NFA's PerTrac search uncovered monthly performance information purportedly for NetBlack that was for the time period of January 2005 through March 2009 – mostly prior to when NetBlack became registered as an NFA Member CTA in November 2008 – and reflected a total return of 56.88% and an average annual return of 13.33%.

19. NFA staff asked Netto about this performance information and he represented that the performance for the period January 2005 through September 2007 was for Black Flag Global Macro Fund LLC ("the Fund"), which was a commodity pool formerly operated by Black Flag; that the performance for September 2007 through December 2007 was for accounts that Black had discretion over during that time (according to Netto, he included the performance results for Black because Black's and his "trading strategy is very similar."); and that the performance for the period January 2008 through March 2009 was for a discretionary account managed by M3 and an account that NetBlack traded for Netto Trading, which is an entity purportedly owned by Netto and his brother.

20. Netto told NFA that he obtained the monthly rates of return for the Fund from the Fund's certified financial statements. However, NFA reviewed the certified financial statements for the Fund and noted that the rates of return included therein were annual, not monthly, as reflected in NetBlack's promotional material and reported by PerTrac.

21. NFA also asked Netto for support for the advertised monthly rates of return, but Netto said that he had no carrying broker statements or other outside documentation to support the advertised rates of return for the Fund and Black.

22. By reason of the foregoing acts and omissions, NetBlack and Netto are charged with violations of NFA Compliance Rule 2-29(b)(5).

## 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, 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 associated person with a new sponsor, may be denied registration based on the pendency of this proceeding.

Pursuant to the provisions of Commodity Futures Trading Commission ("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: 8-25-09

By: _____
Chairperson

/jac(Complaints\NetBlack_Netto)

## AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on August 25, 2009, 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:

NetBlack Capital LLC
1050 E. Cactus Avenue
Suite 2027
Las Vegas, NV 89183
Attn: John F. Netto
Managing Member

John F. Netto
111 Linden Avenue
San Bruno, CA 94066

Nancy Miskovich-Paschen

Nancy Miskovich-Paschen

Subscribed and sworn to before me
on this 25th day of August 2009.

Margaret A. Vandermyde

Notary Public

OFFICIAL SEAL
Margaret A. Vandermyde
Notary Public, State of Illinois
MY COMMISSION EXPIRES 03-15-10