

FILED

AUG 25 2009

NATIONAL FUTURES ASSOCIATION  
BEFORE THE  
BUSINESS CONDUCT COMMITTEE

NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING

In the Matter of:	)	
	)	
BLUE SKY CAPITAL MANAGEMENT	)	
CORP.	)	
(NFA ID #380646),	)	
	)	
and	)	NFA Case No. 09-BCC-026
	)	
GREGORY M. SCHNEIDER	)	
(NFA ID #381513),	)	
	)	
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 Blue Sky Capital Management Corporation ("Blue Sky") and Gregory M. Schneider ("Schneider").

**ALLEGATIONS**

**JURISDICTION**

- At all times relevant to this Complaint, Blue Sky was a commodity trading advisor ("CTA") and commodity pool operator NFA Member. As such, Blue Sky 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, Schneider was a principal and associated person ("AP") of Blue Sky and an Associate Member of NFA. As such, Schneider was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof. Blue Sky is liable for violations of NFA Requirements committed by Schneider during the course of his activities on behalf of Blue Sky.

### **BACKGROUND**

3. Blue Sky is located in Lebanon, Tennessee and has been an NFA Member and registered CTA since March 27, 2007. Schneider is the sole principal and sole AP of the firm and has been so since Blue Sky's inception.
4. NFA conducted an audit of Blue Sky beginning on October 21, 2008. During the audit, Schneider represented that the firm had only ten customers. He told NFA that those customers traded exclusively in off-exchange foreign currency futures contracts ("forex") at FX Solutions LLC ("FXS"), a futures commission merchant ("FCM") and Forex Dealer Member ("FDM") of NFA. Schneider also told NFA that Blue Sky began trading the accounts in March 2008 and that Blue Sky's total assets under management were approximately \$20,000.
5. Following the October audit, NFA received a complaint from a member of the public who claimed to be a Blue Sky customer. NFA noted that this individual was not among the ten Blue Sky customers who had been identified to NFA by Schneider during the audit. Follow-up on the complaint by NFA's Compliance staff revealed that Blue Sky and Schneider had failed to disclose to NFA the existence of more than 80 additional managed accounts which were held at

FCM/FDM Member Global Futures & Forex, Ltd. ("GFT") and were open and actively trading forex during 2007. Although Schneider had represented that Blue Sky had not started trading customer accounts until March 2008, NFA's review of the GFT accounts determined that every one of them traded during 2007 – well before the March 2008 date that Schneider represented marked the beginning of customer trading. Total deposits to the GFT accounts were more than \$1.4 million. Every GFT account that traded suffered losses and aggregate net losses for all accounts totaled nearly 30% of invested equity.

6. In addition to failing to disclose the existence of the GFT accounts to NFA, Schneider and Blue Sky falsely represented to NFA that the firm had no customer complaints, presented misleading performance information in the firm's Disclosure Document ("DD") and used a DD that was required to be submitted to NFA for its review and approval but which Blue Sky never submitted to NFA.

#### **APPLICABLE RULES**

7. 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.
8. NFA Compliance Rule 2-36(b)(1) provides, in pertinent part, that no FDM shall cheat, defraud or deceive, or attempt to cheat, defraud, or deceive any other person.
9. NFA Compliance Rule 2-41(b) provides, in pertinent part, that any Member or Associate managing, directing or guiding, or soliciting to manage, direct, or guide, accounts or trading on behalf of a client by means of a systematic program involving forex trading must prepare a DD and file it with NFA at least 21

days before soliciting the first potential client and deliver the DD to a prospective client no later than the time it delivers the agreement to manage, direct, or guide the client's account or trading.

### COUNT I

#### **VIOLATION OF NFA COMPLIANCE RULE 2-2(f): WILLFULL SUBMISSION OF MATERIALLY FALSE OR MISLEADING INFORMATION TO NFA.**

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10. The allegations contained in paragraphs 1 through 7 are realleged as paragraph 10.
11. During NFA's October 2008 audit of Blue Sky, NFA questioned Schneider about an apparent conflict between the representation in the firm's DD's performance table that the trading of customer accounts began in March 2008 and the representation in the DD's business background section that trading began in March 2007. In response, Schneider represented on behalf of Blue Sky that trading began in March 2008 and that the 2007 date was in error.
12. During NFA's October 2008 audit of Blue Sky, Schneider represented on behalf of Blue Sky that the firm managed only ten accounts and that those accounts were held at FXS. Schneider represented further to NFA that Blue Sky's total assets under management were approximately \$20,000.
13. Blue Sky and Schneider willfully submitted materially false or misleading information to NFA and omitted information which rendered Schneider's representations to NFA misleading in that, contrary to Schneider's representations to NFA on behalf of Blue Sky, Blue Sky actually began trading 80 customer accounts that had total deposits of approximately \$1.4 million at GFT in, at least, March 2007.

14. During NFA's October 2008 audit of Blue Sky, Schneider also represented on behalf of Blue Sky that the firm had not had any customer complaints.
15. Blue Sky and Schneider willfully submitted materially false or misleading information to NFA in that, contrary to Schneider's representation to NFA, Schneider and Blue Sky were dealing with a complaint from customer John Istel ("Istel") at the very time that NFA was conducting its audit.
16. By reason of the foregoing acts and omissions, Blue Sky and Schneider are charged with violations of NFA Compliance Rule 2-2(f).

## **COUNT II**

### **VIOLATION OF NFA COMPLIANCE RULE 2-36(b)(1): CHEATING, DEFRAUDING OR DECEIVING ANOTHER PERSON OR ATTEMPTING TO DO SO.**

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17. The allegations contained in paragraphs 1, 2 and 8 are realleged as paragraph 17.
18. NFA Compliance Rule 2-39(a) provides, in pertinent part, that Members and Associates who solicit customers, introduce customers to counterparties, or manage accounts on behalf of customers in connection with forex transactions shall comply with NFA Compliance Rule 2-36(b).
19. Blue Sky and Schneider solicited customers, introduced customers to counterparties, and/or managed accounts on behalf of customers in connection with forex transactions and were, therefore, required to comply with NFA Compliance Rule 2-36(b).
20. Blue Sky and Schneider cheated, defrauded or deceived other persons or attempted to do so in that they used a DD in, at least, October 2008 that only presented purported performance for accounts that Blue Sky managed for four

months during 2008 which was mostly profitable while the DD omitted any reference to the existence of and the overall losing performance of its managed accounts in 2007. Specifically, the only performance data contained in the DD was for four months of trading during 2008, to wit: March, up 9.03%; April, up 3.44%; May, down 5.08%; and June, up 7.26%, while the existence of and the performance data for the 80 GFT accounts that Blue Sky managed during 2007 and which overall lost nearly 30% of their equity was not disclosed in any way.

21. By reason of the foregoing acts and omissions, Blue Sky and Schneider are charged, by operation of NFA Compliance Rule 2-39(a), with violations of NFA Compliance Rule 2-36(b)(1).

### **COUNT III**

#### **VIOLATION OF NFA COMPLIANCE RULE 2-41(b): DISTRIBUTING A DISCLOSURE DOCUMENT WITHOUT REQUIRED PRE-SUBMISSION TO NFA.**

22. The allegations contained in paragraphs 1, 2 and 9 are realleged as paragraph 22.
23. Blue Sky and Schneider sent an e-mail to Istel on or about March 10, 2009 in which Schneider suggested that Istel should invest additional funds to be traded by Blue Sky using a forex trading program. A Blue Sky DD, dated February 16, 2009, was included as an attachment to this e-mail.
24. The February 16, 2009 DD that Blue Sky and Schneider provided to Istel had not been submitted to or approved by NFA before Blue Sky and Schneider used it in their solicitation of Istel.
25. By reason of the foregoing acts and omissions, Blue Sky and Schneider are charged with violations of NFA Compliance Rule 2-41(b).

## **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.

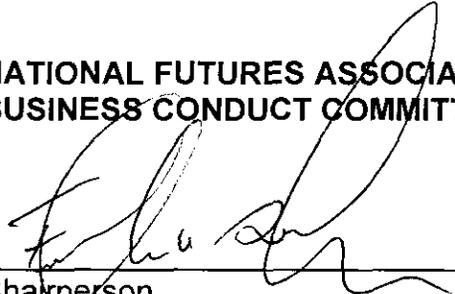
The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act.

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 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

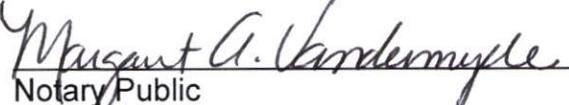
**AFFIDAVIT OF SERVICE**

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

Blue Sky Capital Management Corp.  
100 Glenway Point  
Lebanon, TN 37087  
Attn: Gregory Schneider  
President

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

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

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

