

NATIONAL FUTURES ASSOCIATION  
BEFORE THE  
BUSINESS CONDUCT COMMITTEE

FILED

SEP 25 2009

In the Matter of: )  
)  
INCOME PLUS ASSET MANAGEMENT, INC. )  
(NFA ID #361134), )  
)  
and )  
)  
WILLIAM HAMPTON FISCHBACH )  
(NFA ID #399897), )  
)  
Respondents. )

NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING

NFA Case No. 09-BCC-037

**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 income Plus Asset Management, Inc. ("IPAM") and William Hampton Fischbach ("Fischbach").

**ALLEGATIONS**

**JURISDICTION**

1. IPAM was a registered introducing broker ("IB") NFA Member located in Orlando, Florida.
2. William Hampton Fischbach ("Fischbach") was IPAM's sole owner, principal, and registered associated person ("AP") and was an NFA Associate.

**APPLICABLE RULES**

3. 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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4. The allegations contained in paragraphs 1 through 3 are realleged as paragraph 4.
5. IPAM became an NFA Member in May 2009. IPAM did not file a certified financial statement as part of the IB application process and, therefore, was subject to an examination within six months of its registration.
6. During the application process, NFA reviewed IPAM's website and noted that it advertised for IPAM's managed forex systems, which claimed to have annual returns ranging from almost 40% to almost 75% in 2007 and annual returns of over 3.5% to over 36% in 2008. Similar annual returns for 2005 and 2006 were also included. Based on these high advertised returns, NFA decided to conduct an audit of IPAM sooner than the six-month deadline for the purpose of satisfying itself that IPAM could support these returns. Prior to the start of NFA's audit, IPAM removed the performance from its website.
7. On July 29, 2009, NFA went to the main office address that IPAM provided to NFA, which is also Fischbach's personal residence, to commence an examination of the firm.
8. At that time, Fischbach told NFA that he was under the impression that NFA would notify him prior to commencing an examination and that he was not prepared. NFA explained to Fischbach that it does not announce all

examinations prior to commencing them and provided him with a list of documents that IPAM was required to make available to NFA. Fischbach represented that he would need a few days to gather all of the requested documents and NFA agreed that it would return the following Monday, August 3, 2009 to obtain such documents.

9. On August 3, 2009, Fischbach informed NFA staff that he had applied to withdraw IPAM's registration and NFA membership. NFA informed Fischbach that an application to withdraw registration and NFA membership would not be effective for at least thirty days and that, in any event, NFA had the authority to block IPAM's withdrawal from membership. Accordingly, NFA informed Fischbach that he and IPAM were still subject to NFA's audit and document request. However, in light of Fischbach's request to withdraw from NFA membership, NFA agreed to revise the list of documents that Fischbach needed to produce to NFA in order to limit the burden on Fischbach.
10. Fischbach agreed to meet with NFA at IPAM's offices at 10:00 a.m. on August 5, 2009. However, shortly before the scheduled meeting on August 5, Fischbach sent an e-mail to NFA indicating that he was canceling the meeting claiming that "the principles of respect, privacy of home, and generally the 'tactics' [of NFA] are something I cannot get past at this point." Fischbach further stated in his e-mail that, "[b]ottom line, I respectfully decline to participate in this process any more" and that he was seeking to withdraw "as a simple matter of principle" and requested that NFA approve his withdrawal application.

11. In response to Fischbach's e-mail, NFA sent a letter to Fischbach reiterating that he was required to cooperate with NFA's examination and informing him that failure to do so would subject him and IPAM to disciplinary action.
12. Shortly after sending this letter, NFA received an e-mail from Fischbach who again requested that NFA immediately approve his application for withdrawal. NFA sent another e-mail to Fischbach in which it reiterated that IPAM was still subject to NFA rules and if he chose not cooperate with the examination he and the firm would be in violation of NFA rules. Fischbach sent NFA an e-mail in response indicating that he did "not feel compelled to cooperate further" since he had sought to withdraw from NFA.
13. NFA then contacted Forex Capital Markets LLC ("FXCM"), a forex dealer Member of NFA, for which IPAM solicited forex accounts. FXCM provided NFA with records relating to IPAM, including trading records for all accounts introduced and/or managed by IPAM, the soliciting agreement between IPAM and FXCM, and records of IPAM's cash accounts at FXCM.
14. NFA's review of these documents revealed that IPAM had introduced approximately 1,800 accounts to FXCM and that IPAM had about 600 customer accounts at the time of NFA's exam, with a total equity of approximately \$856,000. Approximately 450 of these accounts are managed by IPAM.
15. NFA reviewed the trading activity in the accounts managed by IPAM and compared the trading with the rates of return that had been touted on IPAM's website. NFA's review revealed that none of the returns listed on IPAM's website matched the actual trading records. In fact, the annual rates of return in the

- trading records reflected that all of the accounts managed by IPAM suffered overall annual losses, ranging from -1.21% to almost -73%, which is a far cry from the positive returns touted on IPAM's website.
16. On August 18, 2009, NFA received a telephone call from Fischbach, in which he again asked NFA to allow his membership withdrawal to proceed. During this and subsequent telephone conversations and e-mails, Fischbach and NFA discussed IPAM's operations and the records that IPAM would need to provide as part of the examination.
  17. NFA inquired about the type of promotional material that IPAM used and Fischbach indicated that, in addition to IPAM's website, he sent e-mails with recent performance figures to individuals on his "e-mail list". NFA told Fischbach that these e-mails needed to be produced to NFA as part of its audit. However, Fischbach indicated that these e-mails "were already discussed with [NFA]."
  18. NFA also requested that Fischbach provide NFA with a list of AP discretionary accounts. Fischbach sent NFA an e-mail in which he indicated that there were no AP discretionary accounts. NFA then clarified its request to make clear that the list should also include any accounts that IPAM had discretion over, and Fischbach responded with another e-mail stating, "I told you I don't have ANY AP discretionary accounts."
  19. IPAM's and Fischbach's representations that neither IPAM nor any of its APs managed any discretionary accounts were false and misleading as evidenced by the fact that FXCM's records show that IPAM had discretion over approximately 450 accounts and earned commissions of over \$1.1 million from these accounts.

20. NFA's last correspondence with IPAM was a letter sent to Fischbach on August 21, 2009, which gave the firm until August 24, 2009 to produce all of the records requested by NFA. To date, IPAM and Fischbach have not responded to this letter and have not produced the requested records to NFA. As a result, NFA has been unable to complete its audit of IPAM.
21. By reason of the foregoing acts and omissions, IPAM and Fischbach are 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.

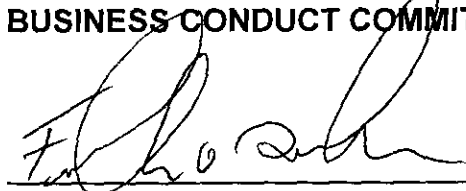
Respondents in this matter who apply for registration in any new capacity, including as an AP with a new sponsor, may be denied registration based on the pendency of this proceeding.

Pursuant to the provisions of 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: 9-25-09

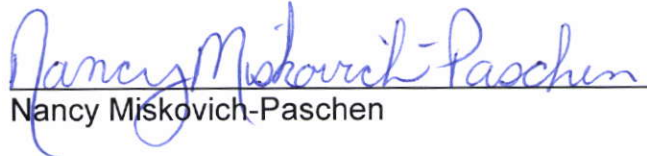
By:   
Chairperson

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**AFFIDAVIT OF SERVICE**

I, Nancy Miskovich-Paschen, on oath state that on September 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:

Income Plus Asset Management, Inc.  
926 N. Texas Avenue  
Orlando, FL 32804  
Attn: William Fischbach

  
Nancy Miskovich-Paschen

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

  
Notary Public

