

NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE

FILED

SEP 30 2009

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of:)
)
KINGZ CAPITAL MANAGEMENT)
CORPORATION)
(NFA ID #385668),)
)
and)
)
DAVID M.S. KRYWENKY)
(NFA ID #389319),)
)
Respondents.)

NFA Case No. 09-BCC-041

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 Kingz Capital Management Corporation ("KCM") and David M.S. Krywenky ("D. Krywenky").

ALLEGATIONS

JURISDICTION

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

BACKGROUND

3. KCM has been an NFA Member since November 9, 2007. Its business address is reflected on NFA's Online Registration System as being in Christ Church, Barbados, although its president and vice president are based in the Toronto, Ontario area. D. Krywenky is KCM's vice president and has been the firm's only AP as well as one of its principals since its inception.
4. As of July 2009, KCM did not have any managed accounts and operated one pool, Kingz Capital Investments LLC ("KCI"), which purportedly traded forex. The pool commenced operations on September 24, 2008. Its unaudited December 31, 2008 statement, which was signed by D. Krywenky, indicated that it had more than \$330 million in assets at that time. A KCI account statement for June 30, 2009 reflected that the pool had nearly \$284 million on that date.
5. In July 2009, NFA received information that indicated that KCM had links to an intertwined group of NFA Member and non-NFA Member entities and individuals that had come under some scrutiny because of difficulties that some investors had encountered in trying to retrieve their investments. For example, a piece in the July 19, 2009 Minneapolis Star Tribune reported that some investors were

attempting to redeem funds from a non-NFA Member entity named Universal Brokerage FX ("UBFX") without success. The article reported that a radio host named Pat Kiley ("Kiley") solicited investors, through his show "Truth Seekers," for what was described as a fully liquid currency arbitrage program at UBFX and that when several investors visited Kiley after they had difficulty redeeming their funds, he told them that they needed to see an individual named Trevor Cook ("Cook"), who is based in the Minneapolis area and is the chief investment officer of an entity named Oxford Global Partners ("OGP"). OGP claims on its website to be a "world-class provider of investment management and risk management services."

6. NFA learned that OGP appeared to be the only investor in KCM's KCI pool and that all of the pool's money had purportedly been deposited with an entity named Crown Forex, SA, a non-NFA Member firm that is regulated by the Swiss Financial Market Supervisory Authority and that was put into bankruptcy by that body in May 2009.
7. NFA learned additional details that raised its level of concern about KCM and its relationships with Cook, Crown Forex, SA and OGP. For example, it appeared that an acquaintance of Cook opened an account in the name "Crown Forex, LLC" at the Associated Bank. Although the name is almost identical to the bankrupt Swiss entity, Crown Forex, SA, it appears that Crown Forex, LLC is a fictitious entity. This information raised further concerns because, on July 30, 2009, the receiver for Crown Forex, SA posted a notice on the firm's website indicating that firm had not accepted any new customers since December 9,

2008 and that it had suspended its activities on May 19, 2009. The notice added that Crown Forex, SA did not have any accounts at Associated Bank in the U.S. and advised readers that account statements with false account numbers may have been issued in the name of Crown Forex, SA.

8. Further investigation by NFA determined that KCM and D. Krywenky allowed Cook, who is not an NFA Member or Commodity Futures Trading Commission ("CFTC") registrant, to essentially take over control of the KCI pool that KCM purportedly operated. The evidence gathered by NFA indicates that KCM and D. Krywenky appear to have failed to diligently supervise their business and failed to uphold high standards of commercial honor and just and equitable principles of trade. *In addition, KCM also circulated press releases that made misleading representations regarding the past performance of the trading system that it was offering to the public.*

APPLICABLE RULES

9. NFA Compliance Rule 2-36(b)(1) provides, in pertinent part, that no Forex Dealer Member ("FDM") or Associate of an FDM shall cheat, defraud or deceive, or attempt to cheat, defraud, or deceive any other person.
10. NFA Compliance Rule 2-36(c) provides that FDMs and their Associates shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their forex business.
11. NFA Compliance Rule 2-36(e) provides that each FDM shall diligently supervise its employees and agents in the conduct of their forex activities for or on behalf of the FDM. Each Associate of an FDM who has supervisory duties shall diligently

exercise such duties in the conduct of that Associate's forex activities for or on behalf of the FDM.

12. NFA Compliance Rule 2-39(a) provides, in pertinent part, that Members and Associates who solicit customers, introduce customers to a counterparty, or manage accounts on behalf of customers in connection with forex transactions shall comply with Sections (a), (b), (c), (e), (h), and (i) of NFA Compliance Rule 2-36.

COUNT I

VIOLATION OF NFA COMPLIANCE RULE 2-36(c): FAILURE TO UPHOLD HIGH ETHICAL STANDARDS.

13. The allegations contained in paragraphs 1 through 7, 10 and 12 are realleged as paragraph 13.
14. KCM and D. Krywenky solicited customers, introduced customers to counterparties, and/or managed accounts on behalf of customers in connection with forex transactions and, by operation of NFA Compliance Rule 2-39(a), were therefore required to comply with NFA Compliance Rule 2-36(c).
15. The observance of high standards and just and equitable principles of trade by NFA Members and their Associates, in part, requires NFA Member CPOs and their Associates to act at all times in the best interests of the participants, both known and unknown, of any pool that the CPO operates.
16. KCM and D. Krywenky purport to have held a good faith belief that, beginning on or about September 24, 2008 and continuing through at least July 2009, KCI pool funds of varying amounts ranging somewhat above and below \$300 million were being held in an account in the name of the pool at Crown Forex, SA.

17. KCM and D. Krywenky failed to act in the best interests of KCI's participants, both known and unknown, in that when they knew or should have known that funds on deposit at Crown Forex, SA were frozen pursuant to that firm's bankruptcy they took no action on behalf of the KCI pool to participate in the bankruptcy as a creditor or otherwise protect KCI's equity.
18. By reason of the foregoing acts and omissions, KCM and D. Krywenky are charged with violations of NFA Compliance Rule 2-36(c), by operation of NFA Compliance Rule 2-39(a).

COUNT II

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

19. The allegations contained in paragraphs 1, 3, 4, 9 and 12 are realleged as paragraph 19.
20. KCM solicited customers, introduced customers to counterparties, and/or managed accounts on behalf of customers in connection with forex transactions and, by operation of NFA Compliance Rule 2-39(a), was therefore required to comply with NFA Compliance Rule 2-36(b)(1).
21. KCM released press announcements to the public on October 15 and October 23, 2008 which both highlighted the purported performance of its Absolute Return Program ("ARP") trading program, stating: "... since inception, the Strategy developed by KINGZ's Trading Advisors has had 69 consecutive winning months, no drawdowns, an average annualized Rate of Return of approximately 10%." KCM copied that performance claim directly from an OGP brochure describing OGP's Global Enhanced Return Strategy ("GERS") trading

system which KCM had renamed ARP and which Cook purportedly used to trade the KCI pool.

22. KCM cheated, defrauded or deceived other persons or attempted to do so in that it had no good faith basis for including the performance claims set forth in paragraph 23 above in the KCM press release and, in fact, had not taken any initiative to determine whether OGP's GERS performance claim that it had adopted was accurate or what data, if any, it was based on.
23. By reason of the foregoing acts and omissions, KCM is charged with violations of NFA Compliance Rule 2-36(b)(1), by operation of NFA Compliance Rule 2-39(a).

COUNT III

VIOLATION OF NFA COMPLIANCE RULE 2-36(e): FAILURE TO SUPERVISE.

24. The allegations contained in paragraphs 1, 2, 11 and 12 are realleged as paragraph 24.
25. KCM and D. Krywenky solicited customers, introduced customers to counterparties, and/or managed accounts on behalf of customers in connection with forex transactions and, by operation of NFA Compliance Rule 2-39(a), were, therefore required to comply with NFA Compliance Rule 2-36(e).
26. KCM and D. Krywenky were responsible for the diligent supervision of KCM's business operations
27. The diligent supervision of employees and agents in the conduct of forex activities for or on behalf of an NFA Member, in part, requires NFA Member CPOs and their Associates who have supervisory responsibilities to create and execute appropriate procedures to ensure that the movement, trading and location of pool funds are properly accounted for and safeguarded.

28. The allegations contained in paragraphs 3 through 7 and 14 through 17 are realleged as paragraph 28.
29. As of, at least, September 24, 2008 and continuing through the date of issuance of this Complaint, Cook was not an NFA Member. Nor was he a listed principal or AP of KCM or any other NFA Member. In addition, he was not a CPO or CTA and had not had any CFTC registration or any disclosed affiliation with any NFA Member since November 2007.
30. KCM and D. Krywenky failed in their duty to supervise in that they failed to create and execute appropriate procedures to ensure that the movement, trading and location of KCI pool funds were properly accounted for and safeguarded in that they gave Cook virtually unfettered and unsupervised control of the KCI pool which they purported to operate. For example, they permitted Cook to purportedly open a forex trading account for KCI at Crown Forex, SA even though KCM, not Cook, was the pool operator for KCI. In addition, KCM and D. Krywenky permitted Cook to make all deposits into and trading decisions for the purported KCI account at Crown Forex, SA. Further, Cook could, and did, change the passwords on KCI's accounts and informed KCM and D. Krywenky of the changes only after they had been made. KCM and D. Krywenky also permitted Cook to effectuate a purported \$75 million withdrawal from KCI's trading accounts for a purported OGP investor who was identified to them by Cook only as "Fased". Indeed, the passing mention of Fased in an e-mail from Cook was the only information that KCM and D. Krywenky had about the

identities of any of the individuals and/or entities that were invested through OGP in the KCI pool that they supposedly operated through KCM.

31. KCM and D. Krywenky further failed to create and execute appropriate procedures to ensure that the movement, trading and location of KCI pool funds were properly accounted for and safeguarded in that D. Krywenky exhibited significant confusion and a lack of knowledge over even basic matters relating to KCM and KCI. For example, when NFA asked him about how the KCI pool's account at Crown Forex, SA was set up, he were unsure as to who had signed the account opening documents. Further, KCM and D. Krywenky routinely forwarded questions from potential KCI pool participants to Cook so that he could address the inquiries.
32. The diligent supervision of employees and agents in the conduct of forex activities for or on behalf of an NFA Member, in part, requires NFA Members and their Associates who have supervisory responsibilities to ensure that the Member's promotional material is in compliance with NFA Requirements.
33. The allegations contained in paragraphs 20 through 22 are realleged as paragraph 33.
34. KCM and D. Krywenky failed in their duty to supervise in that they failed to ensure that KCM's promotional material was in compliance with NFA Requirements.
35. By reason of the foregoing acts and omissions, KCM and D. Krywenky are charged with violations of NFA Compliance Rule 2-36(e) by operation of NFA Compliance Rule 2-39(a).

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
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.

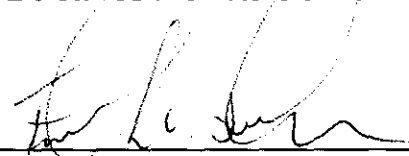
The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act.

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: 09/30/09

By: 
Chairperson