

**CHALLENGE TO THE ACCURACY OF THE ALLEGATIONS SET FORTH
IN THE NOTICE OF INTENT TO DENY REGISTRATION**

Mr. Rischall challenges the accuracy of the allegations set forth in the Notice because the allegations are not a complete description of the matters to which they pertain. Mr. Rischall believes that important additional information which he has set forth below and in his attached affidavits are necessary additions to the facts stated in allegation 3 and in allegation 5 (as set out in the Notice). Mr. Rischall believes that this additional information provided herein will assist the NFA Membership Committee, or its designated Sub-committee, in finding that neither Section 8a(3)(H), nor Section 8a(2)(G) of the Commodity Exchange Act require statutory disqualification when taking into account all of the facts and circumstances evident in this matter.

Please see the First Affidavit of Aaron S. Rischall attached as Appendix 1 to this response for a general description of his understanding of the Issues addressed in the Notice.

CHALLENGE TO THE ACCURACY OF ALLEGATION 3.

Specifically, allegation 3 of the Notice States:

On October 29, 2004, in the Dane County, Wisconsin Circuit Court, in Wisconsin v. Rischall, Case No. 2004CF001378, Rischall pled no contest to one count of knowingly delivering a controlled substance (to wit: tetrahydrocannabinols), a class 1 felony offense, in violation of Wisconsin Statutes Section 961.41(1)(h)1.

MR. RISCHALL WAS NEVER CONVICTED OF ANY OFFENSE IN THIS CASE AND ALL CHARGES AGAINST HIM WERE ULTIMATELY DISMISSED.

The allegation is, albeit unintentionally, misleading in that it fails to include or even reveal the post pleading modification of the record by the Court. Please note that this was not ever a case of post conviction modification. Mr. Rischall was never convicted of anything regarding this matter – as described more fully in

Appendix 1 – First Affidavit of Aaron S. Rischall. Rather this was a case where the charge against Mr. Rischall was dismissed by the Court.

After his no contest plea and his very successful completion of a program under the close supervision of the Court, all charges against Mr. Rischall were dismissed.

Again, Mr. Rischall was never convicted and all charges were dismissed by the Court.

Please see Appendix 2, Second Affidavit of Aaron S. Rischall and the attached Court reports.

Certainly the fact that all charges were dropped against Mr. Rischall is mitigating evidence relative to his conduct and to the original charge against him. The appropriate Court of jurisdiction, here the Wisconsin Circuit Court for Dane County, determined that no conviction was appropriate and that the original charge should be dismissed. The Court record reflects evidence of Mr. Rischall's rehabilitation as supervised by and as presented to the Court.

It seems apparent that CFTC and NFA rules were not designed to require statutory disqualification in those cases where an applicant for registration was charged with an offense, or even where an applicant pled to an offense, but where in either case the applicant was never convicted of any offense and all charges were subsequently dismissed.

For purposes of completeness of the record we would like to note two additional facts.

- We note that, while it is certainly not binding on the NFA, The Chicago Board Options Exchange, Inc. ("CBOE") when reviewing Mr. Rischall's association with his employer as a member firm of CBOE found that the record in this case did not amount to a statutory disqualification as far as CBOE is concerned.

Please see Appendix 3 which includes CBOE's letter to CMZ Trading, LLC and a CBOE internal message concluding "No statutory disqualification".

- We also note that, (while it may not be controlling in all cases) the Wisconsin Circuit Court Access (WCCA) as part of the Court's report regarding the dismissal of charges in this case, (i.e. State of Wisconsin vs. Aaron S. Rischall Dane County Case Number 2004CF001378), appends a "Notice to employers" which notice states that:

"It may be a violation of state law to discriminate against a job applicant because of an arrest or conviction record. Generally speaking, an employer may refuse to hire an applicant on the basis of a conviction only if the circumstances of the conviction substantially relate to the particular job". (emphasis added)

While these facts or opinions may not be absolutely dispositive in all cases it is important to note that in this case Mr. Rischall was never in fact convicted of anything, and that additionally the original charges against him were not in any way related to his prospective or potential activities as a registrant of NFA.

Please see Appendix 4: Wisconsin Circuit Court Access record including "Notice to employers."

This challenge to Allegation 3 in the Notice is based upon the fact that there was no conviction in this case and the fact that all charges were dropped and this challenge is supported by the attached affidavits.

We respectfully suggest and request that it would be consistent with the Court's finding, and reasonable, for the NFA to find that in fact no statutory disqualification exists regarding this matter since all charges against Mr. Rischall were in fact dismissed.

CHALLENGE TO THE ACCURACY OF ALLEGATION 5.

Specifically, Allegation 5 of the Notice states:

In addition, Rischall failed to disclose the fact he pled no contest to a felony offense on his current registration application dated July 9, 2009.

The nature of Mr. Rischall's challenge to this allegation involves his error and his lack of experience or training in legal matters, and his confusion regarding the effects of the Court's dismissal of the charges against him.

Mr. Rischall is not a lawyer and has had no legal training or experience.

Mr. Rischall was confronted with a particular question on his application for registration regarding whether he had ever pled to a criminal charge. He replied "no" because he believed that the dismissal of the charges against him by the Court on or about August 18, 2005 "wiped the slate clean" and fundamentally resulted in a dismissal of the original charges against him, the pleadings including his pleading, and all legal procedures and ramifications which stemmed from the charges.

Later upon reflecting he realized that the fact that he had entered a plea may not have been negated by the Court's dismissal of the charges against him.

Mr. Rischall then contacted the NFA long before anyone contacted him in this matter and spoke with a representative about how to properly reflect his plea and change his answer on the application for registration. Mr. Rischall was told that no action by him was required at that time and that he would have an opportunity to offer an explanation at a later time.

Mr. Rischall admits and regrets his mistake. He apologizes for his incorrect answer.

He offers as mitigating evidence his lack of experience or training in legal matters and the fact that his mistake was the result of his lack of understanding of the extent and effect of the dismissal of the charges against him.

Mr. Rischall offers that this mistake was unintentional and inadvertent and that he tried to take remedial action to remedy the situation before he was contacted by NFA.

Please see the Third Affidavit of Aaron Rischall attached as Appendix 5.

We respectfully suggest and request that it would be reasonable for the NFA to find that no statutory disqualification exists regarding this matter since Mr. Rischall's incorrect response was not intended to deceive and was understandable given his lack of legal training and given the relatively complex nature of the legal proceedings in which he was involved.

STATEMENT REGARDING RISK TO THE PUBLIC
OF REGISTRATION OF AARON S. RISCHALL

Mr. Rischall believes that his registration as a floor broker and floor trader under the Commodity Exchange Act would pose no substantial risk to the public.

Mr. Rischall hereby states his intent to show, notwithstanding the allegations contained in the NFA Notice of Intent, or the accuracy thereof, that his full or conditional registration will pose no substantial risk to the public.

In addition to providing the information, affidavits, and records hereby provided with this Response, Mr. Rischall will comply with NFA procedure for filing additional statements and information required no later than 30 days before the date of any hearing regarding these matters.

**REQUEST FOR NFA REVIEW TO DETERMINE TO
RECOMMEND A SETTLEMENT IN THIS MATTER**

We respectfully request that NFA staff review this case to determine if staff would be willing to recommend a settlement of this matter.

Mr. Rischall is willing to consider registration subject to certain conditions as may be appropriate, if recommended by staff. Mr. Rischall believes that he will be able to find one or more sponsors to supervise a conditional registration should that become necessary.

Mr. Rischall is ready to provide any and all additional information staff may find necessary in their consideration of this request.

REQUEST

Based on the information and documents submitted with this Response, Aaron S. Rischall respectfully requests that his application for registration as a floor broker and floor trader under the Commodity Exchange Act be granted; or that in the alternative NFA staff determine that a settlement of this matter is appropriate; or that in the alternative in light of this written Response to the NFA Notice (and the fee submitted) this matter be set for a hearing.

Respectfully Submitted
On behalf of:

Aaron S. Rischall

By:


Mark F. Duffy
His Attorney