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DEC - 9 2009

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE

In the Matter of:	)	
	)	
CAPITAL FX LLC	)	
(NFA ID #379515),	)	
	)	
and	)	NFA Case No. 09-BCC-053
	)	
ROBERT W. PECORD	)	
(NFA ID #390465),	)	
	)	
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 Compliance Rules ("NFA Requirements") are being, have been, or are about to be violated and that the matter should be adjudicated, NFA's Business Conduct Committee ("Committee") issues this Complaint against Capital FX LLC ("CFX") and Robert W. Pecord ("Pecord").

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, CFX was a commodity trading advisor ("CTA") Member of NFA. As such, CFX 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, Pecord was a principal and associated person of CFX and an Associate of NFA. As such, Pecord was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for

violations thereof. CFX is liable for violations of NFA Requirements committed by Pecord during the course of his activities on behalf of CFX.

BACKGROUND

3. CFX has been a CTA Member of NFA since January 29, 2009. It is located in Elizaville, New York and Pecord is its only employee. In August 2008, the State of Washington Department of Financial Institutions Securities Division ("Securities Division") issued an action against Pecord and an entity that he owned/operated named Capital Asset Group LLC ("CAG"). The action alleged that Pecord sold promissory notes to at least one investor and that the proceeds were invested in a forex investment program through CAG. The action alleged further that Pecord and CAG violated Washington's Securities Act by using deceptive practices in marketing securities and by selling securities without required state registration. The Securities Division's action, which remains pending, seeks a cease and desist order, as well as the imposition of a fine and costs.

4. In light of the allegations made by the Securities Division, NFA's Compliance Department commenced an audit of CFX and Pecord's current operations. During the course of that audit, Pecord made material misrepresentations to NFA regarding his and CFX's managed account activities and his history of engaging in activities similar to those that led to the Securities Division's action. CFX and Pecord also failed to fully cooperate in at least one aspect of NFA's investigation. In addition, a disclosure document ("DD") used by CFX omitted certain required information which caused the DD to be deceptive and misleading. Further, a

website used by CFX included a misrepresentation of fact which caused the website to also be deceptive and misleading.

APPLICABLE RULES

5. 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.

6. 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 or any NFA disciplinary or arbitration proceeding.

7. NFA Compliance Rule 2-36(b)(1) provides, in pertinent part, that no Forex Dealer Member ("FDM") shall cheat, defraud or deceive, or attempt to cheat, defraud, or deceive any other person.

8. 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 must, if it intends to manage, direct, or guide the client's account or trade in forex transactions, prepare and deliver a DD that complies with the requirements in Commodity Futures Trading Commission ("CFTC") Regulations 4.34, 4.35, and 4.36 as if managing, directing, or guiding accounts or trading in on-exchange futures contracts.

COUNT I

VIOLATION OF NFA COMPLIANCE RULE 2-2(f): PROVIDING FALSE OR MISLEADING INFORMATION TO NFA.

9. The allegations contained in paragraphs 1 through 5 are realleged as paragraph 9.

10. Pecord provided misleading information to NFA on behalf of CFX by failing to disclose to NFA's auditors some of the accounts that he had managed in the past. Specifically, at the beginning of NFA's June 2009 audit of CFX, CFX had discretion over nine forex accounts at Ikon Global Markets ("Ikon") and Pecord claimed that CFX had also managed a "couple of hundred" accounts at the now defunct Forex Liquidity LLC ("FXLQ"). NFA asked Pecord repeatedly if either he or CFX ever managed any other discretionary accounts and, in each instance, Pecord replied that the accounts at Ikon and FXLQ were the only accounts that they had ever managed.

11. Pecord's representations to NFA that the Ikon and FXLQ accounts were the only accounts that he and/or CFX had ever managed were false and misleading in that, in addition to the accounts that Pecord acknowledged, from May 2005 through February 2006, Pecord, personally, also had discretionary trading authority over eight futures accounts at Rosenthal Collins Group LLC ("RCG"). These accounts had total deposits of $450,000 and all of them lost money overall.

12. Pecord's representations to NFA that the Ikon and FXLQ accounts were the only accounts that he and/or CFX had ever managed were additionally false and misleading in that he failed to disclose that, from January through April 2008, CFX held power of attorney over twelve forex accounts at Interbank FX LLC ("IFX").

13. NFA's auditors inquired of Pecord as to whether the promissory notes involved in the Washington Securities Division action were the only promissory notes that

he, CFX or CAG had ever entered into and Pecord said, yes, those were the only promissory notes that he, CFX or CAG had ever entered into.

14. The information provided to NFA by Pecord on behalf of CFX, as alleged in paragraph 13 above, was false and misleading in that Pecord and CAG had entered into at least two other promissory notes with additional third parties in the State of New York.

15. By reason of the foregoing acts and omissions, CFX and Pecord are charged with violations of NFA Compliance Rule 2-2(f).

COUNT II

VIOLATION OF NFA COMPLIANCE RULE 2-5: FAILURE TO COOPERATE IN AN NFA INVESTIGATION.

16. The allegations contained in paragraphs 1 through 4 and paragraph 6 are realleged as paragraph 16.

17. In addition to the eight customer accounts at RCG, Pecord also traded what he claimed was a proprietary account for CAG at RCG. That account had total deposits of $1.6 million and lost $619,000.

18. Pursuant to NFA's investigation on July 30, 2009, NFA required Pecord to provide CAG's bank statements in order to independently verify the true origin of the funds in the CAG account at RCG.

19. Pecord and CFX failed to promptly and fully cooperate in NFA's investigation in that, although Pecord had previously indicated that he would make the CAG bank statements available to NFA, he ultimately refused to produce them to NFA.

20. By reason of the foregoing acts and omissions, CFX and Pecord are charged with violations of NFA Compliance Rule 2-5.

COUNT III

VIOLATION OF NFA COMPLIANCE RULE 2-41(b)(3): USE OF AN INACCURATE OR INCOMPLETE DISCLOSURE DOCUMENT.

21. The allegations contained in paragraphs 1, 3, 4 and 8 are realleged as paragraph 21.

22. CFX managed, directed or guided, or solicited to manage, direct, or guide, accounts or trading on behalf of clients by means of a systematic program to trade in forex transactions and was, therefore, required to prepare and deliver a DD to customers that complied with the requirements of CFTC Regulations 4.34, 4.35, and 4.36, as if CFX was managing, directing, or guiding accounts or trading in on-exchange futures contracts.

23. CFX prepared and delivered a DD, dated February 27, 2009, that failed to comply with the requirements of CFTC Regulations 4.34, 4.35, and 4.36 in that:

- The DD failed to include the information that Pecord was named in the action taken by the State of Washington's Securities Division in August 2008, as required under CFTC Regulation 4.34(k)(i). In fact the DD affirmatively misrepresented that, "There has never been any material administrative, civil or Criminal litigation against Capital FX, LLC or Robert Pecord, and there is none pending, on appeal or concluded."

- The DD stated, "Neither this trading advisor nor its trading principal has previously directed any accounts", which statement was untrue and not in compliance with the requirements of CFTC Regulations 4.34 and 4.35 in that CFX managed accounts at FXLQ, Ikon and IFX and Pecord personally had discretionary authority over accounts at RCG.

- In addition, the DD did not include all required past performance data required under CFTC Regulations 4.34 and 4.35. Specifically, the DD omitted performance information for the accounts that CFX managed at FXLQ, Ikon and IFX, as well as for the accounts that Pecord managed at RCG.

24. By reason of the foregoing acts and omissions, CFX is charged with violations of NFA Compliance Rule 2-41(b)(3).

COUNT IV

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

25. The allegations contained in paragraphs 1, 3, 4 and 7 are realleged as paragraph 25.

26. 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).

27. CFX solicited customers, introduced customers to counterparties and/or managed accounts on behalf of customers in connection with forex transactions and is, therefore, required to comply with NFA Compliance Rule 2-36(b)(1).

28. CFX's website, www.cfxtrading.com, included a claim that, "Performance is monitored using sophisticated technology to provide for consistent returns with minimum fluctuations."

29. This claim on CFX's website was deceptive and misleading in that CFX had not, in fact, experienced consistent returns. Rather its trading had resulted in monthly draw downs of as high as 17%.

30. The allegations contained in paragraph 23 are realleged as paragraph 30.

31. CFX's February 27, 2009 DD was misleading and deceptive in that it misrepresented Pecord's litigation history, falsely claimed that neither CFX nor Pecord had previously directed any accounts and omitted the unprofitable past performance of accounts that CFX and Pecord had managed in the past.

32. By reason of the foregoing acts and omissions, CFX is charged, by operation of NFA Compliance Rule 2-39(a), with violations of NFA Compliance Rule 2-36(b)(1).

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 Answer must be filed by delivery or mail to:

National Futures Association
300 South Riverside Plaza
Suite 1800
Chicago, Illinois 60606-6613
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 con-

nection with the issuance of this Complaint, the Committee 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 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
BUSINESSCONDUCTCOMMITTEE

Dated: 12-9-09

By: _____
Chairperson

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AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on December 9, 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:

Capital FX LLC
68 Benton Road
Elizaville, NY 12523
Attn: Robert W. Pecord

Nancy Miskovich-Paschen

Nancy Miskovich-Paschen

Subscribed and sworn to before me
on this 9th day of December 2009.

Margaret A. Vandermyde

Notary Public

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