

NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE

FILED

DEC 16 2009

In the Matter of:

GFS FOREX & FUTURES, INC.
(NFA ID #316995),

YUN LUN HO
(NFA ID #370391),

and

MATTHEW PAUL CENSULLO
(NFA ID #396633),

Respondents.

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

NFA Case No. 09-BCC-059

COMPLAINT

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association ("NFA"), and having found 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 GFS Forex & Futures, Inc. ("GFS"), Yun Lun Ho ("Ho"), and Matthew Paul Censullo ("Censullo").

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, GFS was a futures commission merchant ("FCM") and an NFA Forex Dealer Member ("FDM") located in San Francisco, California.
2. At all times relevant to this Complaint, Ho was an associated person ("AP"), listed principal, chief financial officer ("CFO") and chief compliance officer ("CCO") of GFS, as well as an NFA Associate.

3. At all times relevant to this Complaint, Censullo was an AP of GFS and an NFA Associate.

APPLICABLE RULES

4. NFA Compliance Rule 2-40(a) provides, in pertinent part, that an FDM may not enter into a bulk assignment, transfer, or liquidation of forex positions or accounts unless done so in compliance with the procedures established by NFA.
5. NFA's *Interpretive Notice*, entitled "NFA Compliance Rule 2-40: Procedures for the Bulk Assignment or Liquidation of Forex Positions; Cessation of Customer Business," provides, among other things, that prior to any bulk liquidation or transfer of customer accounts an FDM must notify NFA. Additionally, an FDM may only liquidate or transfer customer accounts with either the express written consent of its customers or after providing customers with written prior notice of such liquidation or transfer. The written notice must be submitted to NFA before it is sent to customers.
6. 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.
7. NFA Compliance Rule 2-36(d) provides, in pertinent part, that an FDM shall be subject to discipline for the activities of any person that solicits or introduces a customer to the Member or manages such customer's accounts, unless such person is a Member or Associate of NFA.
8. 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.

COUNT I

VIOLATION OF NFA COMPLIANCE RULE 2-40(a): FAILURE TO PROVIDE NFA WITH A COPY OF A NOTICE TO CUSTOMER OF BULK LIQUIDATION/TRANSFER PRIOR TO PROVIDING SUCH NOTICE TO CUSTOMERS.

9. The allegations contained in paragraphs 1, 4 and 5 are realleged as paragraph 9.
10. On April 9, 2009, GFS informed NFA that it intended to cease operating as an FDM and intended to initiate a bulk liquidation and transfer of its customer accounts to another counterparty. NFA asked GFS's CFO, Ho, for details regarding this pending transfer and Ho represented to NFA that the decision to transfer GFS's customers had only recently been made and GFS intended to comply with all applicable NFA rules.
11. An attorney for GFS subsequently represented to NFA that GFS intended to stop accepting new customer business after April 21, 2009, and intended to cease acting as an FDM prior to May 16, 2009. The attorney further represented that GFS planned to transfer its customer accounts to City Credit Capital (UK) Ltd. ("CCC"), a forex broker authorized and regulated by the Financial Services Authority in the United Kingdom.
12. NFA independently learned that GFS's president, Alfred Hin Keung Tang, was also the majority owner of CCC.
13. CCC is not an authorized forex counterparty enumerated under the Commodity Exchange Act (the "Act") for over-the-counter retail forex futures and options transactions. When NFA discussed this issue with GFS's attorney, he agreed that CCC was not an enumerated counterparty, but indicated that if customers

- asked to have their funds transferred to CCC he believed GFS could not refuse.
14. NFA informed GFS that they could not recommend any particular broker and could not recommend that U.S. customers open accounts with a counterparty that is not enumerated under the Act.
 15. On April 20, 2009, NFA received an e-mail from Ho representing that GFS posted a notice to customers regarding the bulk liquidation and transfer of accounts on its website, [www.gfsforex.com].
 16. GFS, however, had not provided the above notice to NFA prior to posting it on its website, as required under NFA Compliance Rule 2-40 (a).
 17. The above notice contained the following statement:

We, of course, welcome you to transfer your GFS account to City Credit Capital (UK) Ltd. However, the choice of a new home for your forex trading account is exclusively yours and nothing in this Notice should be understood as a recommendation for City Credit Capital (UK) Ltd.
 18. NFA found the above notice to be deficient and directed GFS to immediately remove it from its website. GFS later posted a revised notice on its website, which had first been reviewed by NFA. This revised notice clearly informed GFS's customers that CCC was not an enumerated counterparty under the Act and, accordingly, that GFS could not transfer its U.S. customer accounts to CCC.
 19. By failing to provide a copy of the initial notice to NFA prior to posting it on its website, GFS violated NFA Compliance Rule 2-40.
 20. By reason of the foregoing acts and omissions, GFS is charged with violations of NFA Compliance Rule 2-40.

COUNT II

VIOLATION OF NFA COMPLIANCE RULE 2-36(b)(1): USE OF DECEPTIVE PROMOTIONAL MATERIAL BY GFS.

21. The allegations contained in paragraphs 1, 3, and 6 are realleged as paragraph 21.
22. NFA identified at least fourteen U.S. customer accounts that GFS transferred to CCC. On May 12, 2009, NFA requested that GFS provide a written explanation to NFA regarding the transfer of these customer accounts to CCC.
23. Ho represented that GFS had not transferred customer accounts or positions, but rather merely transferred cash balances to CCC, "as specifically directed by individual customers." Ho further claimed that "[n]o one at GFS has encouraged, requested or suggested to any of these individual customers that they open an account at CCC." This representation of Ho was false.
24. In an e-mail to a U.S. customer, dated April 28, 2009, Censullo stated that he had partially completed account opening documents for the customer to open an account with CCC and that the customer only needed to provide some missing information and then sign the account opening documents.
25. The next day, the customer sent an e-mail to Censullo in which she expressed concern about transferring her account to CCC and complained that she had "no idea what [she was] signing." Censullo sent an e-mail back to the customer informing her that GFS had bought CCC and "[e]verything will be re-branded GFS Forex in a month or so . . . [and] [w]e are moving ALL client funds." Censullo assured the customer that she was "signing a standard application that ALL of [Censullo's] current clients [were] signing." (Emphasis in original.)

26. Censullo further assured the customer that "[e]verything will be fine . . . I promise" and that CCC's regulator in the UK "is much more strict than FINRA or the SEC."
27. Censullo clearly encouraged the above customer to transfer her account to CCC, contradicting Ho's representation to NFA. Moreover, Censullo's e-mail to the customer was misleading.
28. Censullo implied that GFS was simply merging its operations with CCC, whereas GFS was, in fact, going to continue to exist as a separate FCM entity and was only ceasing its operations as an FDM.
29. Additionally, Censullo's suggestion that the UK subjects retail forex trading to stricter regulations than the U.S. is misleading, so too is the reference to FINRA and the SEC because GFS was never regulated by either of these agencies.
30. This was not the first time Censullo had misled this customer. Previously, Censullo had recommended to the customer that she hire Matt James ("James") to manage her account.
31. The customer asked Censullo in an e-mail if James was "registered with the NFA" and asked for James's resume. The next day, Censullo responded to the customer's e-mail claiming that James was "registered with the NFA as a certified Introducing Broker" and that both Censullo and James would soon be registered as commodity trading advisors ("CTAs"). However, contrary to Censullo's representations, James has never been a Member of NFA nor registered in any capacity with the Commodity Futures Trading Commission ("Commission" or "CFTC"). In fact, James has never even filed an application to become registered with the Commission.

32. Additionally, despite claiming that both he and James would soon be registered CTAs, Censullo has never filed an application to register as a CTA.
33. Censullo also provided the customer with a resume for James that represented that James was "NFA Regulated (U.S.)" and "Currently studying for the CTA examinations via U.S. trading company to be completed in March 2009." However, as alleged above, James has never been, or applied to become, an NFA Member or a registrant with the Commission.
34. Censullo further provided the customer with copies of activity statements for accounts purportedly traded by James which showed trading profits of approximately 80% and 100%. Censullo represented to NFA that these trading results were for accounts traded by James at Advanced Currency Markets SA ("ACM") in Geneva, Switzerland and that he had confirmed their accuracy with ACM.
35. When NFA contacted ACM, however, it represented that the above account statements were not for any of its accounts and that it had never heard of James.
36. NFA then spoke with James who claimed that the account statements were real, but that they related to accounts that were traded at a firm other than ACM. However, James refused to identify the account owners of these accounts or where these accounts were traded.
37. On June 10, 2009, NFA requested a response from Ho regarding Censullo's recommendation of James to one of his customers. In a letter dated June 19, 2009, GFS's attorney represented that GFS's policy is to only promote registered CTAs and that Censullo violated that policy. The letter further stated that by failing to obtain the approval of a GFS manager prior to sending the information

regarding James to the customer, Censullo violated GFS's e-mail policy. The attorney also represented that Censullo was terminated as an AP of GFS as of June 19, 2009 and that GFS had enhanced its supervisory procedures with respect to the use of e-mail.

38. As the foregoing allegations show, GFS, through Censullo, provided false and deceptive information and documents to the customer.
39. By reason of the foregoing acts and omissions, GFS and Censullo are charged with violations of NFA Compliance Rule 2-36(b)(1).

COUNT III

VIOLATION OF NFA COMPLIANCE RULE 2-36(b)(1): USE OF DEFICIENT PROMOTIONAL MATERIAL BY ONE OF GFS'S NON-NFA MEMBER THIRD-PARTY SOLICITORS.

40. The allegations contained in paragraphs 1, 6 and 7 are realleged as paragraph 40.
41. Avalon FX ("Avalon") is a non-NFA Member solicitor and account manager for GFS. Avalon maintained a website, [www.avalonfx.com], which, according to GFS's records, Ho had supposedly reviewed and approved. Yet, NFA found that Avalon's website contained misleading statements.
42. For example, Avalon's website claimed that:

Since the Foreign Exchange market generates endless opportunities to identify profitable scenarios, our traders are strategically aligned in an effort to produce double-digit quarterly gains with limited draw downs.

In addition to the opportunity to generate significant profits, a Managed Account provides diversification to investors' portfolios, given that returns in the FX market are not correlated to the stock and bond markets.

43. NFA asked GFS for support for these claims of potential double-digit quarterly gains. In response, GFS told NFA that Avalon only exercised trading authority over a single customer account at GFS and the trading records for this account revealed losses – not double-digit returns. In fact, all the money in this account was lost in less than two months of trading by Avalon.
44. By reason of the foregoing acts and omissions on the part of Avalon, GFS is charged, pursuant to NFA Compliance Rule 2-36(d), with violations of NFA Compliance Rule 2-36(b)(1) for Avalon's deceptive promotional material.

COUNT IV

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

45. The allegations contained in paragraphs 1, 2 and 8 through 44 are realleged as paragraph 45.
46. Ho is a principal and registered AP of GFS as well as the firm's CCO. He is responsible for the firm's day-to-day operations, including review and approval of third-party solicitors' websites.
47. Ho was the person with whom NFA had direct contact during its examination. Ho was also the person responsible for working with NFA during the bulk transfer of customer accounts.
48. The numerous violations alleged above, and GFS and Ho's admitted ignorance and lack of awareness of Censullo's activities, evidence a serious failure on the part of GFS and Ho to diligently supervise GFS's operations and employees.
49. By reason of the foregoing acts and omissions, GFS and Ho are charged with violations of NFA Compliance Rule 2-36(e).

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.

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.

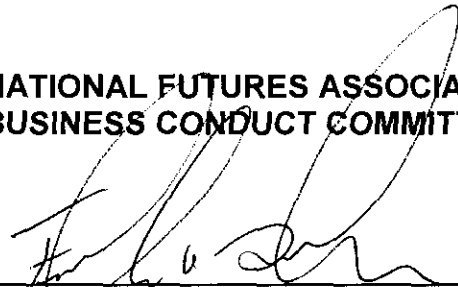
The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act.

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: 12/16/09

By: 
Chairperson

AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on December 16, 2009, I served copies of the attached Complaint, by sending such copies in the United States mail, first-class delivery, and by overnight mail, in envelopes addressed as follows to:

GFS Forex & Futures, Inc.
One Post, Suite 2550
San Francisco, CA 94104
Attn: Yun Lun Ho, Vice President

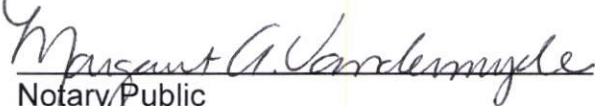
Yun Lun Ho
One St. Francis Place
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San Francisco, CA 94107

Matthew P. Censullo
610 Adams Street
Apt. #3
Hoboken, NJ 07030



Nancy Miskovich-Paschen

Subscribed and sworn to before me
on this 16th day of December 2009.



Notary Public

