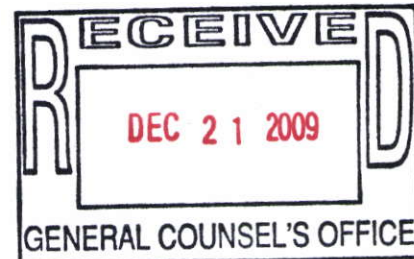


NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE



In the Matter of:)
)
IKON GLOBAL MARKETS, INC.)
(NFA ID#327622)) NFA Case No. 09-BCC-045
)
Respondent.)

ANSWER AND AFFIRMATIVE DEFENSES OF
RESPONDENT IKON GLOBAL MARKETS, INC.

I. VERIFICATION

1. Respondent IKON Global Markets, Inc. ("IKON" or "Respondent"), by its attorney, moves for summary dismissal of, and answers, the November 17, 2009 Complaint filed by the Staff of the National Futures Association ("NFA Staff") in this Matter before the Business Conduct Committee ("BCC") of the NFA, as follows:

II. ANSWER TO COMPLAINT

2. The Complaint consists of several allegations. The allegations in the Complaint are denied to the extent not addressed herein, and responded to below.

3. **ALLEGATION ONE:** IKON is a futures commission merchant forex dealer member ("FDM") located in New York, New York. IKON has been an NFA Member since March 2003.
ANSWER: Respondent admits to this Allegation.

4. **ALLEGATION TWO:** NFA Compliance Rule 2-36(c) provides in pertinent part, 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. **ANSWER:** Respondent admits to this Allegation.

5. **ALLEGATION THREE:** NFA Compliance Rule 2-9(a) provides, in pertinent part, that each Member shall diligently supervise its employees and agents in the conduct of their activities or on behalf of the Member. **ANSWER:** Respondent admits to this Allegation.

6. **ALLEGATION FOUR:** NFA Compliance Rule 2-9(b) provides that NFA's Board of Directors ("Board") may require Members that meet specific criteria established by the Board relating to the employment history of its associated persons ("APs") to, under NFA Compliance Rule 2-9(a), implement enhanced supervisory procedures specified by the Board for the supervision of the Member's telemarketing activities. **ANSWER:** Respondent admits to this Allegation.

7. **ALLEGATION FIVE:** The allegations contained in paragraphs 1 and 2 are realleged as paragraph 5. **ANSWER:** Respondent repeats and realleges its Answers to Paragraphs 1 and 2.

8. **ALLEGATION SIX:** CFS Capital Management LLC ("CFS") is a commodity trading advisor, which directed customer accounts held at IKON. As a result of trading losses that occurred between approximately October 3 and 8, 2008, a number of CFS's customer accounts at IKON had deficit balances totaling approximately \$111,000. **ANSWER:** Respondent admits to this Allegation.

9. **ALLEGATION SEVEN:** Pursuant to an agreement between CFS and IKON, if a customer did not satisfy a deficit balance in its account at IKON, CFS was liable for the deficit. **ANSWER:** Respondent admits to this Allegation.

10. **ALLEGATION EIGHT:** On October 20, 2008, IKON, at the direction of CFS, reallocated approximately \$350,000 of customer funds across customer accounts, debiting some accounts and crediting those accounts in deficit, so that no account was in deficit any longer.

ANSWER: Respondent admits to this Allegation.

11. **ALLEGATION NINE:** IKON made the reallocation requested by CFS without undertaking any inquiry of its own to determine whether such “reallocation” was appropriate or reasonable. **ANSWER:** Respondent denies this Allegation.

12. **ALLEGATION TEN:** By its acts and omissions, IKON facilitated the misuse of its customer funds by CFS, acted in a manner that was grossly contrary to the interest of its customers, and failed to observe high standards of commercial honor and just and equitable principles of trade. **ANSWER:** Respondent denies this Allegation.

13. **ALLEGATION ELEVEN:** By reason of the foregoing acts and omissions, IKON is charged with violations of NFA Compliance Rule 2-36(c). **ANSWER:** Respondent generally denies the acts or omissions referenced in the Allegation.

14. **ALLEGATION TWELVE:** The allegations contained in paragraph 1, 3, and 4 are realleged as paragraph 12. **ANSWER:** Respondent realleges its Answers to Paragraphs 1, 3 and 4.

15. **ALLEGATION THIRTEEN:** By a letter dated August 7, 2008, IKON was notified that due to its employment of APs previously employed by one or more Disciplined Firms, it was subject to the Enhanced Supervisory Procedures (“Enhanced Procedures”) under NFA

Compliance Rule 2-9. Accordingly, IKON was required to record all conversations between APs and existing or potential customers. **ANSWER:** Respondent admits to this Allegation.

16. **ALLEGATION FOURTEEN:** By a letter dated September 8, 2008, IKON requested a waiver of the Enhanced Procedures. On February 11, 2009, the Telemarketing Procedures Waiver Committee issued a Decision denying IKON's request. NFA notified IKON of this decision and that the Enhanced Procedures must be adopted by IKON within 30 days, i.e. by March 13, 2009. **ANSWER:** Respondent admits to this Allegation.

17. **ALLEGATION FIFTEEN:** IKON represented to NFA that it had purchased and installed a system to record telephone conversations on March 31, 2008, over two weeks after it was supposed to have the system in place. **ANSWER:** Respondent denies this Allegation.

18. **ALLEGATION SIXTEEN:** IKON later discovered that its taping system was not working properly which necessitated repairs to the system that were not completed until April 23, 2008. **ANSWER:** Respondent denies this Allegation.

19. **ALLEGATION SEVENTEEN:** As a consequence, IKON did not begin tape recording conversations between its APs and existing or potential customers until April 23, 2009- over a month after it was required to begin taping these conversations. **ANSWER:** Respondent denies this Allegation.

20. **ALLEGATION EIGHTEEN:** By reason of the foregoing acts or omissions is charged with violations of NFA Compliance Rules 2-9(a) and (b). **ANSWER:** Respondent generally denies the acts or omissions referenced in the Allegation.

III. ARGUMENT

A. **IKON's Actions Regarding the Customer Accounts Associated with CFS Were Proper.**

21. The Complaint alleges that IKON reallocated approximately \$350,000 in customer funds across accounts at the direction of CFS, resulting in no accounts remaining in deficit ("Reallocations"). The Complaint goes on to allege that IKON "*made the reallocation requested by CFS without undertaking any inquiry of its own to determine whether such 'reallocation' was appropriate or reasonable.*" This statement is incorrect.

22. In May 2008, IKON entered into an Account Services Agreement with CFS with respect to particular customer accounts in order to provide foreign exchange trading services ("Account Services Agreement"). At that time, CFS was, and remains, an NFA registered commodity trading advisor. See Exhibit A. In October of 2008, IKON management spoke to CFS management about the Reallocations requested by CFS. CFS indicated that the reason why such Reallocations were necessary was because CFS had provided incorrect information to IKON due to its own system errors. A similar explanation was provided to the NFA when it conducted an investigation that led to the BCC Action filed against CFS on June 30, 2009. IKON clearly stated that no such Reallocations would be permitted unless IKON received an opinion from CFS' counsel which authorized the actions.

23. On or about October 17, 2008, IKON received an electronic mail from CFS management which stated that, in consultation with its counsel, CFS had determined that the Reallocations were proper. See Exhibit B. CFS' counsel was copied on the electronic mail. At the time, CFS' counsel was a former senior vice president and associate general counsel of a national

commodities exchange, a partner in the Securities, Commodities and Exchange Regulation Practice of a prominent global law firm of over 1000 attorneys, and had been recognized in a 2007 and 2008 edition of *The Best Lawyers In America* in the area of derivatives law. Although CFS' counsel denied providing any regulatory guidance on this matter pursuant to the NFA investigation of and the BCC case filed against CFS, at no time was that purported advice to IKON corrected by CFS or its counsel- via email or otherwise. Instead, IKON relied on what appeared to be a valid legal opinion that the actions were permissible under CFTC/NFA regulations.

24. As per the Account Services Agreement with CFS, IKON was bound by certain obligations, any breach of which could have led to a lawsuit against either party. The Agreement stated that IKON could "*not impose any unreasonable operational requirements or procedures that interfere with the trading strategies of CFS.*" Despite the existence of an executed Power of Attorney by each customer that gave certain trading authority to CFS, in an effort to ensure that CFS was acting properly and that IKON was performing its own legal obligations under the Agreement, IKON demanded that CFS provide the legal opinion referenced above. By not allowing the Reallocations to occur after CFS had furnished a legal opinion which approved them, IKON could have been considered to be breaching the Account Services Agreement. Once CFS represented that its attorney had approved the actions, and in an effort to ensure that it was not violating its Agreement with CFS, IKON made the Reallocations as governed by the Account Services Agreement.

25. It should be noted that IKON received no pecuniary gain from the Reallocations. Rather, IKON's primary focus was to act as a proper business registrant in ensuring that its actions with

respect to the customers were not in violation of any regulation; and secondarily, IKON sought to abide by its contractual obligations with CFS as permitted by law. At no time did IKON take any action that intentionally violated any CFTC or NFA Rule. In fact, as is evidenced in the separate BCC case against CFS, the NFA has determined that as an NFA registered entity, CFS violated its own supervisory obligations under NFA Rule 2-36(e). Any effort to ascribe the alleged failings of CFS to IKON is both unfair and untenable. Ultimately, IKON's reliance on the apparently false information provided by CFS led to the allegations set forth herein. Given these circumstances, IKON has been victimized by CFS' actions, and intends on pursuing all legal remedies against CFS for any reputational damages that these circumstances may have inflicted upon IKON's business and its long standing record of strong regulatory compliance.

26. Given (i) the quality of counsel involved in this matter and IKON's requirement that CFS seek her opinion prior to any actions, (ii) the subsequent email which copied counsel and indicated that the Reallocations were proper, (iii) the evidence that CFS violated its supervisory obligations as an NFA registered entity, and (iv) IKON's adherence to its contractual obligations to CFS; it is Respondent's position that IKON acted appropriately and in good faith with respect to this matter. Therefore, this Count should be dismissed.

B. IKON's Actions Regarding the Taping of Customer Phone Calls Were Done in Good Faith and Did Not Violate the Spirit of the Enhanced Supervisory Procedures.

27. The Complaint states that IKON should have implemented a telephone taping system on or before March 13, 2009. IKON submits that, in March, it held discussions with service providers Bright Arrow Technologies and Inpath Devices, Inc. in order to implement the required taping procedures. The cost of this installation was approximately seven thousand

dollars (\$7,000). To the best of IKON's knowledge, the taping mechanism was properly installed and was taping calls. IKON later discovered that the equipment was malfunctioning due to Inpath's installation error. As soon as this was discovered, IKON informed the NFA and took proper actions to ensure that relevant calls were taped going forward. Because IKON relied upon recognized third party professionals to meet the timing of such requirement, and due to the fact that the installation had nothing to do with the IKON's efforts to comply with NFA Rules or its commitment to its obligations, IKON submits that the second Count must be dismissed.

**IV. MOTIONS REQUESTED TO BE CONSIDERED BY
THE BUSINESS CONDUCT COMMITTEE**

28. Respondent respectfully requests that the allegations in the Complaint be dismissed on grounds stated herein because the evidence establishes that (i) IKON observed high standards of commercial honor and just and equitable principles of trade; (ii) IKON did diligently supervise its employees and agents; and (iii) IKON did implement enhanced supervisory procedures for the supervision of telemarketing activities. Therefore, no remedial action is either warranted or necessary.

29. Respondent respectfully request that, should the BCC not dismiss this Complaint, the BCC grant Respondent a hearing to present evidence and argument with respect to the allegations in the Complaint.

30. Respondent further requests that, under Paragraph 5177, Rule 3-8 of the NFA Rules, should the BCC not dismiss this Complaint, the NFA provide Respondent the opportunity for an immediate review of the investigative report and all supporting documents in this matter that are in the possession or under the control of the NFA Compliance Department. This includes, but is

not limited to, any and all documents that the NFA Staff foresees being used at the Hearing associated with this Matter.

III. AFFIRMATIVE DEFENSES

31. The Complaint fails to state uncorrected behavior that rises to a level that would necessitate this type of action, and thus, should be dismissed.

32. The Complaint fails to allege that any of the behavior cited was intentional or reckless, and thus should be dismissed.

33. Respondent has not violated any provision of the Commodity Exchange Act, or any rule, regulation or order promulgated thereunder.

34. Respondents have not violated any rule or regulation of any contract market whose rules or regulations are applicable.

IV. REQUIRED STATEMENTS

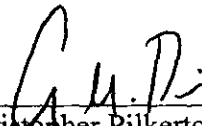
35. This Answer and Affirmative Defenses is filed on behalf of IKON Global Markets, Inc., as to whom the following information is provided: 99 Wall Street, 11th Floor, New York, NY 10005; telephone: (212) 482-8408.

36. IKON designates the following person to receive service of all documents filed in this proceeding, Christopher Pilkerton, Esq., Butzel Long Tighe Patton, PLLC, 1747 Pennsylvania Avenue, NW, Suite 300, Washington, DC 20006.

V. CONCLUSION

WHEREFORE, Respondents respectfully request that this Complaint be dismissed, and in the alternative, that it be granted a hearing on all issues associated with the Complaint in this matter.

Respectfully submitted,



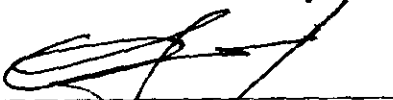
Christopher Pilkerton, Esq.
Butzel Long Tighe Patton, PLLC
1747 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20006

Attorney for IKON Global Markets, Inc.

Dated: December 18, 2009

VERIFICATION

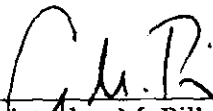
I, Diwakar Jagannath, on behalf of IKON Global Markets, Inc., hereby affirm that I am an officer of the firm, have read the foregoing Answer and Affirmative Defenses of Respondent, and that to the best of my knowledge, all of the statements herein are accurate and true.



Diwakar Jagannath

AFFIDAVIT OF SERVICE

I, Christopher M. Pilkerton, hereby affirm, that on December 18, 2009, this ANSWER AND AFFIRMATIVE DEFENSES OF RESPONDENT IKON GLOBAL MARKETS, INC. was filed with the National Futures Association via electronic mail at Docketing@nfa.futures.org and via first class mail to National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, IL 60606.



Christopher M. Pilkerton

EXHIBIT A



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Details

CFS CAPITAL MANAGEMENT LLC

NFA ID: 0329167

Current Status																				
<ul style="list-style-type: none"> • NFA MEMBER APPROVED • COMMODITY TRADING ADVISOR REGISTERED 																				
Regulatory Actions	NFA Arbitration Awards	CFTC Reparations Cases																		
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Respondent	0																			
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Also Known As	Business Address																			
No other names	DENVER WEST, BLDG. 4 1538 COLE BLVD., SUITE 210 LAKEWOOD, CO 80401 UNITED STATES 303-940-7777																			
Doing Business As																				
No other names																				

Listed Principals

Listed Principal Name	Title	10% or More Financial Interest
<u>WILLIAM EDWARD DAWN</u>	HEAD OF A BUSINESS UNIT, DIVISION OR FUNCTION	NO
<u>ANDREW GABRIEL ELROD</u>	HEAD OF A BUSINESS UNIT, DIVISION OR FUNCTION	NO
<u>BRIAN GLENN ELROD</u>	PRESIDENT	YES
<u>PHILIP JONES</u>	HEAD OF A BUSINESS UNIT, DIVISION OR FUNCTION	NO

History

Status	Effective Date
• NFA MEMBER APPROVED	01/31/2007
• NFA MEMBER PENDING	01/31/2007
• COMMODITY TRADING ADVISOR REGISTERED	05/01/2003
• COMMODITY TRADING ADVISOR PENDING	04/11/2003

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EXHIBIT B

-----Original Message-----

From: Brian Elrod [mailto: [REDACTED]]
Sent: Friday, October 17, 2008 12:31 PM
To: diwakar@kongm.com
Cc: Trkla, Kathryn M.
Subject: Re: Account reallocation

October 17, 2008

Diwakar,

I have reviewed the allocation revisions with our counsel and am confirming that CFS and our counsel believes, as the CTA of record and according to our management agreement, that these revisions need to be made for the client accounts. Thank you for your help.

If you have any questions, please contact me immediately and I will address any concerns you may have. You can reach me at [REDACTED] in the next 20 minutes and after than my cell phone [REDACTED]

With regards,

Brian Elrod, CEO
CFS Capital Management

143 Union Blvd., Ste. 780
Denver, Colorado 80228

(303) 940-7777 Office
(303) 424-3099 Fax

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³BACK IN THE BLACK² 710 am KNUS Saturday 9-10 am