

NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE

NOV 29 2010

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of:)	
)	
CD CAPITAL MANAGEMENT, INC.)	NFA Case No. 10-BCC-032
(NFA ID #402270),)	
)	
Respondent.)	

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, this Committee issues this Complaint against CD Capital Management, Inc. ("CDCM").

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, CDCM was a commodity trading advisor ("CTA") Member of NFA located in Miami, Florida.

BACKGROUND

2. CDCM became a CTA NFA Member in October 2008 and ceased operations in June 2010.
3. In July 2009, NFA conducted an audit of CDCM which found that Kevin Smith ("Smith") – who was a listed principal of CDCM – was acting in the capacity of an associated person ("AP") of CDCM without being registered as such, and that

CDCM had solicited, opened, and managed retail forex customer accounts without first distributing an approved disclosure document to customers.

4. In February 2010, NFA conducted a second audit of CDCM. NFA targeted CDCM for a second audit because Smith had yet to register as an AP of CDCM, and also because CDCM employed Steven A. Michael ("Michael") – who had previously worked at a Disciplined Firm – as an AP and trading principal of CDCM.
5. Michael had previously worked at CFS Capital Management LLC ("CFS"), which was the subject of a 2009 Business Conduct Committee ("BCC") case in which it was charged with transferring funds across customer accounts to conceal the firm's failure to purchase Treasury Bonds for customers in a timely manner as well as to cover-up trading losses – which resulted in some customer accounts going into deficit. The 2009 BCC Complaint also charged CFS with submitting misleading information to NFA, using misleading promotional material, and failing to supervise. CFS settled that case in February 2010 by agreeing to be permanently barred from NFA.

APPLICABLE RULES

6. 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.
7. 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 disclosure document 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.

8. NFA Registration Rule 208(a) provides, in pertinent part, that an applicant for registration as a CTA must list with NFA, at the time it files its application, all individuals that are principals of the applicant. Further, within twenty days after an individual becomes a principal of a CTA applicant or registrant, the CTA must list such individual with NFA as a principal.
9. NFA Compliance Rule 2-36(e) requires, in pertinent part, that each Forex Dealer Member ("FDM") shall diligently supervise its employees and agents in the conduct of their forex activities for or on behalf of the FDM.

COUNT I

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

10. The allegations contained in paragraphs 1, 2 and 6 are realleged as paragraph 10.
11. During NFA's February 2010 audit of CDCM, NFA questioned Smith regarding the activities of several other companies which were affiliated with CDCM – viz., Diversity Group International, Inc. ("Diversity") – which was the parent company of CDCM – Stonehenge Wealth Management, Inc. ("SWM"), and CTFP, Inc. ("CTFP").
12. NFA asked Smith numerous times about the business operations of CTFP – which Smith operated along with CDCM and SWM. Smith both verbally and in

- writing represented to NFA that CTFP never managed any retail forex customer accounts, and only acted as a forex solicitor and introducing broker.
13. However, NFA subsequently learned that CTFP had maintained power of attorney over some of the accounts it introduced to Gain Capital, a Forex Dealer Member of NFA. Smith was aware of these facts, as he operated CTFP. Thus, Smith's representation to NFA – which were made on behalf of CDCM – that CTFP never managed any retail forex customer accounts was false and misleading.
 14. By reason of the foregoing acts and omissions, CDCM is charged with violations of NFA Compliance Rule 2-2(f).

COUNT II

VIOLATION OF NFA COMPLIANCE RULE 2-41(b): SOLICITING AND MANAGING FOREX ACCOUNTS WITHOUT PROVIDING CUSTOMERS WITH AN APPROVED DISCLOSURE DOCUMENT.

15. The allegations contained in paragraphs 1, 2 and 7 are realleged as paragraph 15.
16. None of CDCM's customers who opened their accounts after CDCM became registered as a CTA NFA Member, in October 2008, was provided with an approved disclosure document.
17. To date, CDCM has never submitted a disclosure document to NFA which NFA has approved. In fact, all of the several disclosure documents that CDCM has submitted to NFA for review and approval have been deficient – their most glaring deficiency being their failure to include Michael's abysmal trading history while employed as the head trader at CFS.

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

COUNT III

VIOLATION OF NFA REGISTRATION RULE 208: FAILING TO LIST INDIVIDUALS AS PRINCIPALS OF THE FIRM.

19. The allegations contained in paragraphs 1, 2, 4, 5 and 8 are realleged as paragraph 19.
20. CDCM's registration filings listed John Nemanic ("Nemanic") and Michael as directors of the firm. Michael was also responsible for making trading decisions for all customer accounts managed by CDCM.
21. In addition, a company owned by Nemanic, Kofalt Limited ("Kofalt"), was a large creditor of Diversity (CDCM's parent company and listed principal) by reason of loans totaling \$140,000 that Kofalt made to CDCM between November 1, 2009 and January 31, 2010.
22. Based on these facts and circumstances, CDCM was required to list Nemanic and Michael as principals but it failed to list them as principals until NFA instructed it to do so during NFA's 2010 audit.
23. By reason of the foregoing acts and omissions, CDCM is charged with violations of NFA Registration Rule 208.

COUNT IV

VIOLATION OF NFA COMPLIANCE RULE 2-36(e): FAILING TO SUPERVISE CDCM'S OPERATIONS.

24. The allegations contained in paragraphs 1 through 5 and 9 are realleged as paragraph 24.

25. During NFA's first audit of CDCM, NFA advised CDCM that Smith needed to be registered as an AP of the firm and that CDCM had to provide its managed forex account customers, who opened their accounts after November 30, 2008, with a disclosure document approved by NFA. Yet, as of NFA's second audit in February 2010, CDCM still had not registered Smith as an AP nor provided customers with an approved disclosure document.
26. In addition, CDCM failed to list Nemanic and Michael as principals, and provided false information to NFA about CTFP.
27. The above acts and omissions evidence a serious failure on the part of CDCM to adequately supervise its operations to ensure compliance with NFA Requirements.
28. By reason of the foregoing acts and omissions, CDCM is 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 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.

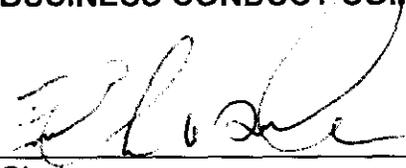
The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act. Respondents in this matter who apply for registration in any new capacity, including as an

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
BUSINESS CONDUCT COMMITTEE**

Dated: 11/29/2010

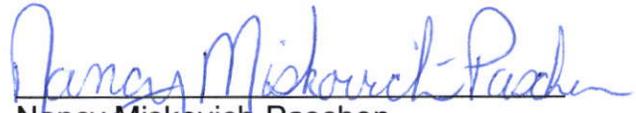
By: 
Chairperson

/jac(Complaints\CDCM)

AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on November 29, 2010, 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:

CD Capital Management, Inc.
1250 South Miami Avenue
Suite 1903
Miami, FL 33130
Attn: Kevin Smith, President


Nancy Miskovich-Paschen

Subscribed and sworn to before me
on this 29th day of November 2010.


Notary Public

