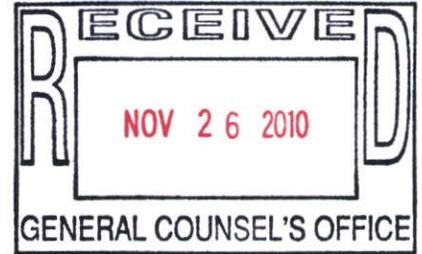


NATIONAL FUTURES ASSOCIATION  
BEFORE THE  
BUSINESS CONDUCT COMMITTEE



In the Matter of: )  
)  
DILIGENT MANAGEMENT LLC ) NFA Case No. 10-BCC-031  
(NFA ID #399324) )  
)  
Respondent. )

**ANSWER TO COMPLAINT BY**  
**RESPONDENT DILIGENT MANAGEMENT LLC**

1. **ALLEGATION ONE:** At all times relevant to this Complaint, DM was a commodity trading advisor ("CTA") NFA Member. As such, DM was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof. **ANSWER:** Statement of fact. No response required.

2. **ALLEGATION TWO:** At all times relevant to this Complaint, Bryce was DM's sole associate person ("AP"), listed principal and an NFA Associate. As such, Bryce was required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof. **ANSWER:** Statement of fact. No response required.

3. **ALLEGATION THREE:** NFA commenced an investigation of DM in October 2009 which found that DM used a deficient disclosure document ("DD") that failed to disclose Bryce's full business background and DM's assets under management, and misrepresented Bryce's trading performance by omitting his previous four years of actual trading which were extremely negative. **ANSWER:** Respondent admits that Bryce's full business background was not disclosed in DD. However, regarding assets under management and trading performance, at the time the DD was initially created NFA Staff had advised Bryce not to include specific past performance due to the fact that (a) Bryce was not registered, nor required to be registered, or keep records as a CTA at the time the trading took place and certain past performance could not be

verified and (b) certain trading was solely incidental to Bryce's business or profession. As over-the-counter forex trading was a regulatory "gray area" at the time, Respondent relied on the advice of NFA Staff.

**4. ALLEGATION FOUR:** Moreover, throughout NFA's investigation, Bryce and DM provided NFA with false and misleading information and repeatedly failed to cooperate with NFA. **ANSWER:** Respondent lacks sufficient information to admit or deny the allegation.

**5. ALLEGATION FIVE:** 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. **ANSWER:** Statement of fact. No response required.

**6. ALLEGATION SIX:** NFA Compliance Rule 2-13(a) provides that any Member who violates any of Commodity Futures Trading Commission ("CFTC") Regulations 4.1, 4.7, 4.12 and 4.16 through 4.41 shall be deemed to have violated an NFA Requirement. **ANSWER:** Statement of fact. No response required.

**7. ALLEGATION SEVEN:** 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 or examination. **ANSWER:** Statement of fact. No response required.

**8. ALLEGATION EIGHT:** The allegations contained in paragraphs 1 through 4 and 6 are realleged as paragraph 8. **ANSWER:** Statement of fact. No response required.

**9. ALLEGATION NINE:** As part of NFA's investigation, NFA reviewed DM's DD dated April 20, 2009. According to the DD, DM intended to trade both on-exchange futures and forex. **ANSWER:** Statement of fact. No response required.

10. **ALLEGATION 10.** During the course of NFA's investigation, NFA learned that Bryce, or entities controlled by Bryce, had power of attorney over at least 21 accounts which traded futures or forex since 2005. CFTC Regulation 4.35(b) requires that a CTA disclose the actual performance of all accounts directed by the CTA and by each of its trading principals. Despite this requirement, DM's DD included the following statement: "Neither this trading advisor nor its principal have previously directed any accounts."

**ANSWER:** Respondent admits that not all of Bryce's prior trading performance was disclosed in DM's DD for reasons specified in paragraph 3.

11. **ALLEGATION 11.** The DD also failed to disclose that Bryce's actual trading performance was overwhelmingly negative from 2005 through 2008. In fact, on an annualized basis for those years, Bryce's rates of return were negative 16%, 29%, 54% and 83%. **ANSWER:** Respondent admits that not all of Bryce's prior trading performance was disclosed in DM's DD for reasons specified in paragraph 3. Regarding the performance returns NFA is alleging, Respondent lacks sufficient information to admit or deny the allegation.

12. **ALLEGATION 12.** CFTC Regulation 4.35(a)(iv)(A) requires a CTA to list all assets under management ("AUM") of the CTA or other person trading the account as of the date of the DD. **ANSWER:** Statement of fact. No response required.

13. **ALLEGATION 13.** The DD which DM and Bryce submitted to NFA listed no AUM. However, NFA obtained account statements from various futures commission merchants ("FCMs") and Forex Dealer Members ("FDMs") which indicated that Bryce and/or DM was trading accounts which had an aggregate value of approximately \$40,000 during the relevant time period. **ANSWER:** Respondent lacks sufficient information to admit or deny this allegation.

14. **ALLEGATION 14.** In addition, CFTC Regulation 4.34(f) requires that a CTA list the business background for five years preceding the date of the DD for the CTA as well as

every principal of the CTA who participates in making trading or operational decisions or supervises a person so engaged. As a result, since Bryce was the trading principal of DM, DM was required to list his business background for the past five years. **ANSWER:** Statement of fact. No response required.

15. **ALLEGATION 15.** The DD submitted by DM indicated that Bryce was a managing member of DM and two other companies: Financial Investment Consultants LLC and Complete Brokerage Services, Inc. **ANSWER:** Statement of fact. No response required.

16. **ALLEGATION 16.** However, during its investigation, NFA obtained corporate records filed with the states of Nevada, Florida, Arizona and New Mexico as well as account opening paperwork provided by FCMs and FDMs which identified Bryce as a managing member in the preceding five years of several other entities (e.g., forex solicitors) that were not included in the DD. **ANSWER:** Respondent paid a consultant to create the DD and consultant did not advise Respondent as to the extent of the business background that should be included in the DD. Respondent admits to this allegation.

17. **ALLEGATION 17.** Based upon other records NFA obtained, it appeared that Bryce was affiliated with several other entities, but because of his failure to cooperate, NFA could not obtain further documentation from Bryce to confirm his involvement with these other entities. **ANSWER:** Bryce has explained that in years prior to Bryce's listing as an AP of DM, Bryce had informally helped friends and associates start their own entities, was at times listed as a registered agent or in some other capacity and Bryce does not possess documentation for each and every such entity. Further, Bryce's business dealings prior to DM were previously audited periodically by the Nevada Securities Division while Bryce was a Registered Investment Advisor in the state of Nevada.

18. **ALLEGATION 18.** As alleged above, DM's DD was deficient in that it failed to disclose Bryce's full business background and DM's AUM and misrepresented Bryce's

trading performance by omitting his previous four years of actual trading which were extremely negative. **ANSWER:** Respondent admits to this allegation only to the extent stated in paragraph 3.

19. **ALLEGATION 19.** By reason of the foregoing acts and omissions, DM and Bryce are charged with violations of NFA Compliance Rule 2-13. **ANSWER:** Statement of fact. No response required.

20. **ALLEGATION 20.** The allegations contained in paragraphs 1 through 5 and 7 are realleged as paragraph 20. **ANSWER:** Statement of fact. No response required.

21. **ALLEGATION 21.** Throughout NFA's investigation of Bryce and DM, Bryce failed to cooperate in NFA's investigation and provided NFA with false and misleading information. **ANSWER:** Respondent denies this allegation to the extent explained in paragraphs 22 through 25.

22. **ALLEGATION 22.** NFA initially contacted Bryce and DM via letter on November 12, 2009 to inform him that NFA was conducting a review of DM's books and records. From November 2009 through March 2010, NFA repeatedly asked Bryce and DM to produce documents and information necessary to NFA's investigation of DM and Bryce. **ANSWER:** Statement of fact. No response required.

23. **ALLEGATION 23.** However, Bryce objected to producing to NFA many of the documents and much of the information requested by NFA. Furthermore, for certain requests, which NFA repeated several times, Bryce only produced the requested information to NFA after a significant delay (in some cases as many as two months after NFA initially made the request). **ANSWER:** Respondent admits to Bryce objecting to producing to NFA certain documents and information requested by NFA. However, many documents and much of the information requested by NFA dated a number of years prior to Respondent's 2008 registration with CFTC when Bryce was not registered, nor required to be registered or keep records, as a CTA and (a) Bryce's

bank was slow to produce certain documentation and was actually unable to produce certain older bank statements and documentation, (b) Bryce was not required to keep certain older documentation and was therefore unable to produce certain documents and information requested by NFA and (c) At times NFA would lose information previously sent and provided and (d) Bryce was advised by legal counsel that certain older documents that had nothing to do with Respondent's registration as a CTA should not have to be provided to NFA.

**24. ALLEGATION 24.** In addition, throughout NFA's investigation, Bryce repeatedly misled NFA. For example, NFA asked Bryce if he had ever introduced any customers to a forex counterparty, and Bryce said he had not. However, NFA obtained documentation from an FDM which indicated that Global Partners LLC, of which Bryce was both a managing member and an owner, had in fact introduced accounts to the FDM as a counterparty. **ANSWER:** Respondent denies the allegation. Respondent admits that Global Partners LLC, of which Bryce was affiliated, had in fact introduced accounts to the FDM as counterparty. However, at the time NFA asked this question of Bryce, Bryce asserts that NFA did not make clear that the question pertained to years prior to Bryce's listing as an AP of DM (during which neither Bryce nor DM was registered, nor required to register or keep records, in any capacity with CFTC/NFA).

**25. ALLEGATION 25.** Furthermore, NFA repeatedly asked Bryce to disclose all futures or forex accounts that had been traded by him or any company with which he was affiliated. Although Bryce claimed to have disclosed all relevant accounts to NFA, NFA independently identified other futures and forex accounts that were traded by Bryce, and/or companies with which he was affiliated, which Bryce never disclosed to NFA. **ANSWER:** Respondent denies the allegation. Respondent admits that not all accounts that were traded by Bryce, and/or companies with which he was affiliated, were disclosed to NFA. However, at the time NFA asked this question of Bryce, Bryce asserts that NFA did not make clear that the question pertained to years prior to Bryce's listing as an AP of DM (during which neither Bryce nor DM was registered, nor required to register or keep records, in any capacity with CFTC/NFA).

26. **ALLEGATION 26.** As specifically alleged above, DM and Bryce failed to promptly and fully cooperate with NFA, and provided false and misleading information to NFA throughout its investigation of Bryce and DM. **ANSWER:** Respondent denies this allegation to the extent explained in paragraphs 22 through 25.

27. **ALLEGATION 27.** By reason of the foregoing acts and omissions, DM and Bryce are charged with violations of NFA Compliance Rules 2-2(t) and 2-5. **ANSWER:** Statement of fact. No response required.

Respectfully submitted,



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Scott L. Bryce on behalf of  
Diligent Management, LLC, Respondent

Dated: November 26, 2010

**AFFIDAVIT OF SERVICE**

I, Scott L. Bryce, hereby affirm, that on November 26, 2010, this Answer was filed with the National Futures Association via electronic mail at [scott@bryce.com](mailto:scott@bryce.com) and via USPS Priority Mail to National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, IL 60606.



Scott L. Bryce

Diligent Management, LLC, Respondent