NATIONAL FUTURES ASSOCIATION BEFORE THE BUSINESS CONDUCT COMMITTEE

FILED

APR 1 3 2012

In the Matter of:) NATIONAL FUTURES ASSOCIATION LEGAL DOCKETING
VINCENT CAPITAL GROUP LLC (NFA ID #426401),))
and) NFA Case No. 12-BCC-015
RYAN LITFIN (NFA ID #426431),)))
Respondents.)

COMPLAINT

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association ("NFA"), and having 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 Vincent Capital Group LLC ("VCG") and Ryan Litfin ("Litfin").

ALLEGATIONS

JURISDICTION

- 1. At all times relevant to this Complaint, VCG was an NFA Member that was registered with the Commodity Futures Trading Commission ("CFTC") as an introducing broker ("IB"). As such, VCG 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, Litfin was a principal and associated person ("AP") of VCG and an NFA Associate. As such, Litfin was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for

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

BACKGROUND

- VCG has been an independent IB Member of NFA since April 15, 2011. It is
 located in Eden Prairie, Minnesota and Litfin was the sole AP and principal of the
 firm at all times relevant to this Complaint.
- 4. In May 2011, NFA received information which suggested that VCG might have a connection to an individual who was involved with a former NFA Associate who was sanctioned by NFA in 2005 for failing to uphold high standards of commercial honor and just and equitable principles of trade and who was subsequently convicted of fraud related charges in 2010. An article in the Minneapolis Star Tribune reported that an associate of that individual, as well as another individual named Dale Francis ("Francis"), attended a seminar put on by VCG in April 2011.
- 5. Based on the Minneapolis Star Tribune article, NFA initiated an audit of VCG in May 2011. The audit revealed that VCG, Litfin and Francis used misleading and deceptive promotional material and sales solicitations in an effort to attract futures and forex customers and that they solicited for forex business without VCG being approved as a forex firm or Litfin and Francis being approved as Forex APs by NFA. In fact, Francis has never been registered with the CFTC in any capacity nor has he ever been an NFA Member, NFA Associate or a principal of any NFA Member.

APPLICABLE RULES

- 6. NFA Compliance Rule 2-2(a) provides that no Member or Associate shall cheat, defraud or deceive, or attempt to cheat, defraud or deceive, any commodity futures customer.
- 7. NFA Compliance Rule 2-22 provides, in pertinent part, that no Member or Associate shall represent or imply in any manner whatsoever that such Member or Associate has been sponsored, recommended or approved, or that such Member's or Associate's abilities have in any respect been passed upon, by NFA or any federal or state regulatory body.
- NFA Compliance Rule 2-29(a)(1) provides that no Member or Associate shall make any communication with the public which operates as a fraud or deceit.
- 9. NFA Compliance Rule 2-29(b)(1) provides that no Member or Associate shall use any promotional material which is likely to deceive the public.
- 10. NFA Compliance Rule 2-29(b)(3) provides that no Member or Associate shall use any promotional material which mentions the possibility of profit unless accompanied by an equally prominent statement of the risk of loss.
- 11. NFA Compliance Rule 2-29(b)(4) provides that no Member or Associate shall use any promotional material which includes any reference to actual past trading profits without mentioning that past results are not necessarily indicative of future results.
- 12. NFA Compliance Rule 2-29(h) provides that no Member shall use or directly benefit from any radio or television advertisement or any other audio or video advertisement distributed through media accessible by the public if the advertisement makes any specific trading recommendation or refers to or

- describes the extent of any profit obtained in the past or that can be achieved in the future unless the Member submits the advertisement to NFA's Promotional Material Review Team for its review and approval at least ten days prior to first use or such shorter period as NFA may allow in particular circumstances.
- 13. NFA Compliance Rule 2-36(b)(1) provides that No Forex Dealer Member ("FDM") or Associate of an FDM engaging in any forex transaction shall cheat, defraud or deceive, or attempt to cheat, defraud or deceive any other person.
- 14. NFA Compliance Rule 2-39(a) provides, in pertinent part, that Members and Associates who solicit customers, introduce customers to a counterparty, or manage accounts on behalf of customers in connection with forex transactions shall comply with Section (b) of Compliance Rule 2-36.
- 15. NFA Bylaw 301(b) provides, in pertinent part, that no person may be associated with a Member of NFA unless the person is registered with NFA as an Associate or is an NFA Member.
- 16. NFA Bylaw 301(j)(i) provides, in pertinent part, that any Member that is registered with the Commission as an IB and engages in forex activities must be approved as a forex firm by NFA.
- 17. NFA Bylaw 301(j)(ii) provides, in pertinent part, that any person associated with a Member that is registered with the CFTC as an IB and engages in forex activities must be approved as a forex AP by NFA in order to engage in forex activities on behalf of such Member.

COUNT I

VIOLATION OF NFA COMPLIANCE RULES 2-2(a), 2-22, 2-29(a)(1), 2-29(b)(1), 2-29(b)(3), 2-29(b)(4), 2-29(h) AND 2-36(b)(1): MAKING DECEPTIVE AND MISLEADING SALES SOLICITATIONS; USING DECEPTIVE AND MISLEADING PROMOTIONAL MATERIAL; MAKING PROHIBITED REPRESENTATIONS REGARDING NFA; AND FAILING TO SUBMIT A RADIO ADVERTISEMENT TO NFA FOR PRE-REVIEW.

- 18. The allegations contained in paragraphs 1 through 14 are realleged as paragraph18.
- NFA conducted an applicant audit of VCG in early 2011 which found that the firm's website (www.vincentcapitalgroup.com) lacked several required disclaimers. VCG responded by deactivating the website in March 2011. Moreover, Litfin represented to NFA that VCG would submit the website to NFA for its review prior to reactivating the website; however, in mid-May 2011, NFA became aware that VCG had reactivated the website in essentially the same form as before without giving prior notice to NFA.
- 20. In addition to its website, VCG also solicited customers through the use of a promotional brochure entitled "Curr€ncie\$ the Emergence of a New Asset Class" (the "brochure") which it distributed to prospective customers who attended the firm's April 2011 seminar.
- 21. VCG's website and the brochure were deceptive and misleading in that they both included purported statements of fact for which VCG had no support. For example, the website contained the following unsupported claims:
 - Thus far we have done well by providing advice yielding exceptional reward to risk ratios by industry standards.
 - He [Litfin] implements the appropriate strategies to your investment portfolio to help shorten the road to a secure financial future.

In addition, the brochure included the following unsupported claims:

- Some banks made 40-60% of all their profits trading currencies.
- The evidence of excess return generation and skill exploiting market inefficiencies in currency markets is dramatic.
- 22. The brochure also highlighted several dramatic profit scenarios in currency trading, but did not accompany such scenarios with equally prominent risk disclosures. The following are examples of statements in the brochure that referenced dramatic profits without even mentioning the risk of loss:
 - Some banks make 40-60% of all their profits trading currencies. In the August 1995 issue of International Financial Magazine, Charles Sanford, Chairman of the Bankers Trust, expressed his opinion that by the year 2020 banks will cease their loan transactional business. This would allow banks to focus on currency trading as their primary revenue source.
 - In September of 1992, Stanley Druckenmiller and George Soros made 1 billion dollars positioning against the British Pound Sterling in less than 24 hours. By the end of the month the financiers made a cool 2 billion dollars on the transaction.
 - Thus, the central tenant of the efficient market hypothesis is not applicable, and supernormal profits should accrue to the profitmotivated participants.
- 23. The brochure also included a graph from Parker Global Strategies LLC which reflected steadily rising monthly returns in currency trading from 1986 through 2006. The graph is accompanied by the following statement:

As can be seen, the graph suggests persistent positive returns from the currency management industry. Another interesting feature is the lack of significant losses in the long history of currency investment. This gives the speculator the distinct mathematical advantage in their approach and methodology of extracting profits from this market. Over 75% of the \$3 trillion market does not care if they make or lose money.

- 24. In June 2011, VCG also began promoting itself by airing weekly one-hour radio shows on a Minneapolis radio station. These shows were hosted by Litfin and Francis and featured discussions of the significant profits that investors could make trading futures. For example, the VCG radio show that aired on June 25, 2011 included the claim by Litfin and Francis that "if you invested \$10,000 in the futures in 1980, it would grow to \$600,000 today," but did not include an equally prominent statement of the risk of loss.
- 25. VCG's June 25, 2011 radio show was also deceptive and misleading in several other respects. For example, Litfin and Francis made material representations that were simply untrue. For example, Litfin stated that VCG was heavily regulated and subject to annual audits. Litfin said that the firm had been audited a month earlier (which coincided with NFA's May 2011 audit of the firm) and that the regulator had not found any problems during the audit. Litfin boasted that, "...they came out and told us that, boy this doesn't happen very often, but there are no deficiencies." This claim was patently false as NFA had found several material violations related to the firm's website and the currency brochure during its May 2011 audit of VCG and had verbally informed the firm of these violations during the audit exit interview on May 26, 2011.
- 26. In addition, Litfin's representation that the May audit of VCG found no deficiencies constituted a representation or implication that NFA sponsored, recommended or approved VCG, or that VCG's abilities had been passed upon by NFA or a federal or state regulatory body.
- 27. VCG's June 25, 2011 radio show, as well as its other radio shows, not only emphasized the profit potential of managed futures but, on the few occasions

- when Litfin and Francis disclosed that past performance is not necessarily indicative of future results, they immediately followed such disclosure with rosy examples of how managed futures had purportedly out-performed other investments thereby significantly diminishing the effect of the prior disclosure.
- VCG's June 25, 2011 radio show, as well as a number of its other radio shows, included claims by Litfin and Francis that research compiled by the Chicago Mercantile Exchange ("CME") demonstrated that managed futures had outperformed various other asset classes over time. These claims were deceptive and misleading in that the CME's research related to historic returns purportedly achieved by the futures industry as a whole while the performance of the trading advisors available to VCG's customers could be significantly different than the performance of the commodity trading advisors (CTAs") used by the CME in compiling its performance figures. However, VCG, Litfin, and Francis failed to disclose this information to listeners.
- 29. Similarly, VCG's September 3, 2011 radio show, which was also hosted by Litfin and Francis, highlighted the profit potential of managed futures without discussing risk of loss or disclosing that past results are not necessarily indicative of future results. For example, the September 3, 2011 radio show included the following profit claims by Litfin and Francis:
 - No wonder the rich get richer, they have access to great institutional traders that we can give you access to.
 - It's been proven that "the inclusion of managed futures reduces your risk and increases your returns."
 - Managed futures have outperformed any other asset class over the last ten years with lower negative correlations.

- If you invested \$10,000 in the stock market in 1980, it would have grown to \$215,000. If you had invested \$10,000 in the futures market, it would have grown to \$650,000.
- 30. Through at least early September 2011, VCG did not submit any of its weekly radio shows, or outlines of such shows, to NFA's Promotional Material Review Team for review and approval at least ten days prior to their first use.
- 31. VCG, Litfin, and Francis also hosted a July 19, 2011 "Wealth Preservation Seminar" ("seminar") which included remarks by Litfin and Francis and handouts and slides. The seminar repeatedly highlighted the significant profit potential of futures trading. For example, one slide stated that managed futures, "increase returns and reduce volatility." Another slide featured a graph that indicated that managed futures had outperformed U.S. stocks by a factor of almost three to one over the past 30 years. In addition, Litfin claimed that, "one of our CTAs [whom Litfin did not identify] has received 130% net return." Yet the seminar failed to include risk of loss disclosures of equal prominence to the discussion of profits. In fact, toward the end of the seminar, Francis showed a slide that displayed a risk disclosure statement which he referred to dismissively as, "Once again, a few disclaimers."
- 32. In addition to suggesting that managed futures offered investors an opportunity to make significant profits with very little risk, Francis also misled seminar participants about the nature of commodities when he compared them to equities. In referring to a slide that indicated that equities could become worthless, Francis told seminar attendees that, "Commodities never go to \$0."
- 33. NFA staff member Kolade Abaje-Williams ("Williams"), using an alias, filled out a request for information on VCG's website and, on or about July 26, 2011, was

contacted by Litfin who solicited Williams to open an account through VCG.

Litfin's solicitation of Williams was deceptive and misleading in a number of respects. For example, Litfin assured Williams that he would make steady and substantial profits; he made false claims to Williams regarding the nature and frequency of NFA audits and the manner in which VCG would be compensated, as illustrated by the following statements that Litfin made to Williams in the course of soliciting Williams to invest:

- Typically, access to a CTA would require an investment of \$10 million.
- Incorporating managed futures into one's portfolio decreases volatility and increases returns.
- One of the firm's CTAs returned 95% last year. Although VCG's customers should not expect to receive 95%, they should expect about a 20% return each year.
- NFA conducts semi-annual unannounced audits and all rates of return presented are audited.
- VCG does not make any money unless its clients make money.
- 34. The foregoing representations that Litfin made to Williams were deceptive and misleading in that they exaggerated the profit potential of trading futures and downplayed the risk of loss.
- 35. By reason of the foregoing acts and omissions, VCG and Litfin are charged with violations of NFA Compliance Rules 2-2(a), 2-22, 2-29(a)(1) 2-29(b)(1), 2-29(b)(3), 2-29(b)(4) and, by operation of NFA Compliance Rule 2-39(a), 2-36(b)(1). VCG is also charged with violations of NFA Compliance Rule 2-29(h).

COUNT II

VIOLATION OF NFA BYLAWS 301(b), 301(j)(i) AND 301(j)(ii): ALLOWING AN UNREGISTERED INDIVIDUAL TO ACT IN A CAPACITY REQUIRING REGISTRATION AS AN AP; AND SOLICITING FOR FOREX TRADING WITHOUT BEING APPROVED AS A FOREX FIRM OR ITS APS BEING APPROVED AS FOREX APS BY NFA.

- 36. The allegations contained in paragraphs 1 through 5 and 15 through 17 are realleged as paragraph 36.
- 37. VCG solicited for forex business at various times during 2011 and was required to be approved by NFA as a forex firm. However, VCG was not an NFA approved forex firm in 2011 and never has been approved by NFA as a forex firm.
- 38. Litfin solicited for forex business on behalf of VCG at various times during 2011 and was required to be approved by NFA as a forex AP. However, Litfin was not an NFA approved forex AP in 2011 and never has been approved by NFA as a forex AP.
- 39. Francis worked in a capacity at VCG in 2011 that required him to be registered as an AP, as well as requiring him to be an NFA Associate and an NFA approved forex AP, in that he solicited for both futures and forex trading on behalf of VCG. However, Francis was not registered as an AP at any time during 2011; nor was he an NFA Associate or an NFA approved forex AP at any time during 2011.
- 40. By reason of the foregoing acts and omissions, VCG is charged with violations of NFA Bylaws 301(b) and 301(j)(1) and Litfin is charged with violations of NFA Bylaw 301(j)(2).

PROCEDURAL REQUIREMENTS

<u>ANSWER</u>

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 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

AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on April 13, 2012, I served copies of the attached Complaint, by sending such copies by e-mail, overnight mail and regular mail, first-class delivery, in envelopes addressed as follows to:

Vincent Capital Group LLC 250 Prairie Center Drive Suite 335 Eden Prairie, MN 55344 E-mail: ryan@vincentcapitalgroup.com Ryan Litfin

and also by e-mail and regular mail, first-class delivery to:

Jeffrey D. Barclay, Esq.
Schuyler, Roche & Crisham, P.C.
One Prudential Plaza
130 East Randolph Street
Suite 380
Chicago, IL 60601

E-mail: jbarclay@srcattorneys.com

<u>Nancy Miskovich-Paschen</u>

Subscribed and sworn to before me on this 13th day of April 2012.

Notary Public

OFFICIAL SEAL
MARY A PATTON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 08/28/2013

AFFIDAVIT OF SERVICE

I, Nancy Miskovich-Paschen, on oath state that on April 16, 2012, I served copies of the attached Complaint, by sending such copies by e-mail, overnight mail and regular mail, first-class delivery, in envelopes addressed as follows to:

Vincent Capital Group LLC 250 Prairie Center Drive Suite 335 Eden Prairie, MN 55344 E-mail: ryan@vincentcapitalgroup.com

Ryan Litfin

and also by e-mail and regular mail, first-class delivery to:

Jeffrey D. Barclay, Esq. Schuyler, Roche & Crisham, P.C. One Prudential Plaza 130 East Randolph Street Suite 380 Chicago, IL 60601

E-mail: <u>ibarclay@srcattorneys.com</u>

Mes L-Paschen

Subscribed and sworn to before me on this 16th day of April 2012.

OFFICIAL SEAL MARY A PATTON NOTARY PUBLIC, STATE OF ILLINOIS COMMISSION EXPIRES 08/28/2013