

2. At all times relevant to this Complaint, Duffy was a principal and an associated person (AP) of MBD Management and an Associate Member of NFA. As such, Duffy was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof. MBD Management is liable for violations of NFA Requirements committed by Duffy during the course of his activities on behalf of MBD Management.

BACKGROUND

3. MBD Management is headquartered in Memphis, Tennessee and has been a Member of NFA since August 7, 2012. At the time of NFA's April 2013 exam of MBD Management, Duffy was the firm's sole listed principal and only AP. He was also an AP of futures commission merchant (FCM) NFA Member McVean Trading & Investments LLC (McVean Trading) from 2002 until January 2013.
4. Duffy formed MBD Management as a separate CTA firm in August 2012 and continued to manage the accounts that he had managed as an AP of the FCM. Duffy has represented that he uses his own individual trading program to trade MBD Management's customers' accounts. MBD Management relies heavily on bunched orders in placing trades for customers.
5. NFA conducted an examination of McVean Trading in late 2012 which, among other matters, raised questions about the calculation of the performance information included in MBD Management's disclosure document as such performance was based entirely on Duffy's trading when he was trading as an AP of McVean Trading. Therefore, NFA initiated an examination of MBD Management in early 2013.

6. NFA's examination of MBD Management found that the firm failed to create adequate written procedures for the allocation of contracts from bunched orders. Specifically, it failed to maintain an audit trail of the allocations that were made from bunched orders that was objective and specific to permit independent verification of the fairness of the allocations and sufficient to demonstrate to NFA that the firm used a defined methodology for the allocation of bunched orders and that it used that methodology consistently over time. Based on those findings, it was evident that Duffy failed to diligently supervise the firm's operations in this respect.

APPLICABLE RULES

7. NFA Compliance Rule 2-9(a) provides that each Member shall diligently supervise its employees and agents in the conduct of their commodity futures activities for or on behalf of the Member. Each Associate who has supervisory duties shall diligently exercise such duties in the conduct of that Associate's commodity futures activities on behalf of the Member.
8. NFA Compliance Rule 2-10 provides, in pertinent part, that each Member shall maintain adequate books and records necessary and appropriate to conduct its business.

COUNT I

VIOLATION OF NFA COMPLIANCE RULES 2-9(a) AND 2-10: FAILING TO DILIGENTLY SUPERVISE AND FAILING TO ENACT REQUIRED PROCEDURES REGARDING ALLOCATIONS FROM BUNCHED ORDERS.

9. The allegations contained in paragraphs 1 through 8 are realleged as paragraph 9.

10. MBD Management traded a comparatively large number of accounts that were managed pursuant to the firm's proprietary trading program and relied heavily on the use of bunched orders in placing trades for its customers. The bulk of the trades were made in agricultural markets.
11. Given its large number of accounts, the markets that it traded and the trading strategies that it employed, it was often not possible for MBD Management to purchase sufficient contracts to allocate a pro rata position to every client, even through multiple orders. This resulted in some customer accounts not being allocated any part of a position and other customer accounts being allocated multiple contracts.
12. During its examination of MBD Management, NFA reviewed the performance of a sample of the firm's managed accounts. That review determined that the performance experienced by accounts of comparable equity that were represented to be trading the same program was often different over the same time period.
13. Specifically, NFA's review of the performance of a sample of six managed accounts with equity of \$50,000 and above from November 2012 through April 2013 revealed that rates of return (RORs) achieved for the quarter comprising November 2012 through January 2013 ranged from 4.96% to -0.94%. During the quarter comprising February through April 2013 the RORs in those same accounts ranged from 3.12% to -12.83%. In addition, the overall RORs achieved in those accounts over the six-month test period ranged from a high of 7.62% to a low of -8.51%.

14. Differing returns can be caused by a number of factors including, among others, account size, addition or withdrawal of funds, the time when an account is opened and an allocation methodology for bunched orders that is not consistently applied over time.
15. In 1997, NFA's Board of Directors issued an Interpretive Notice entitled NFA Compliance Rule 2-10: The Allocation of Bunched Orders relating to the allocation of bunched orders placed for multiple accounts. The Interpretive Notice provides specific guidance regarding CTAs' use of bunched orders and the related obligations of FCMs.
16. The Interpretive Notice defines core principles that must be followed in adopting and implementing procedures for the allocation of trades in a bunched order and provides, in part, that the procedures must be sufficiently objective and specific such that NFA can verify the firm's allocation methodology and that the procedures are consistently applied by the Member firm.
17. MBD Management was obligated to create and maintain written procedures and records that were sufficient to demonstrate to NFA that the firm had a specific methodology for the allocation of contracts from bunched orders and that it used that methodology consistently over time. Meeting that obligation required the firm to have written procedures specifically describing the allocation methodology that it would use and the creation of an audit trail that was sufficient to enable NFA to recreate allocations that were made from bunched orders and verify that the same methodology was used consistently over time.

18. MBD Management did not have written procedures specifically describing a methodology that it used. Further, the audit trail that MBD Management maintained regarding its allocations of contracts from bunched orders was insufficient to enable NFA to verify that the firm had a specific allocation methodology or that a consistent allocation methodology was applied to bunched orders over time.
19. Duffy was the only individual with supervisory authority over the operations of MBD Management. As evidenced by the preceding allegations, Duffy failed to diligently supervise MBD Management's commodity futures operations so as to ensure the creation of specific procedures for the allocation of contracts from bunched orders and the maintenance of an audit trail for the allocation of contracts which enabled NFA to verify that the firm's allocation system operated consistently over time.
20. By reason of the foregoing acts and omissions, Duffy is charged with violations of NFA Compliance Rule 2-9(a) and MBD Management is charged with violations of NFA Compliance Rule 2-10.

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 infor-

mation 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 herein 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 Commodity Futures Trading Commission (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: 04/13/2015

By: Thomas J. Casey
Chairperson