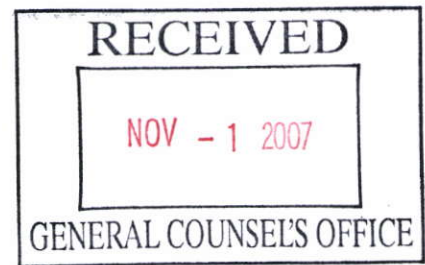


October 31, 2007



National Futures Association  
200 West Madison Street  
Suite 1600  
Chicago, Illinois 60606-3447  
Attn: Legal Department-Docketing

Re: NFA Case No. 07-BCC-029

In the Matter of: BLACK FLAG CAPITAL PARTNERS LLC (NFA ID #345533);  
JASON BLACK (NFA ID #344149)

Dear Business Conduct Committee:

I, Jes ("Jason") Black, have outlined the complaints under each Count lodged against me by the Business Conduct Committee. My responses are below.

**COUNT I: VIOLATION OF NFA BYLAW 301(i)(a) AND NFA REGISTRATION  
RULE 210(a): FAILURE TO UPDATE CHANGE OF BUSINESS ADDRESS**

**Complaint #1)** In January 2007, NFA attempted to contact Black regarding Black Flag's failure to file its annual questionnaire, but was unable to get in contact with Black.

\*Response: Both my phone number and email address on file with the NFA have never changed. The first I heard of the NFA trying to get in touch with me was by phone.

In response to the annual questionnaire not being filed out, if I recall correctly I had filed my audit and updated the annual questionnaire in 2006. I also called into the NFA office to get guidance on the upload. However, by my recollection, something must not have uploaded correctly. I was not aware of this and have since being informed I again contacted technical support at the NFA and we resolved the issue about the annual questionnaire.

**Complaint #2)** NFA Bylaw 301(i)(a) provides, in pertinent part, that each Member must at all times register and maintain with NFA its correct name and principal address.

\*Response: My first office address on file with the NFA was 1 Henderson Street, Hoboken, NJ (which was an office complex). I then decided to save on overhead and

moved to 613 4<sup>th</sup> Street Hoboken, NJ, where I set up a home office to trade from my two-bedroom apartment. This also served as my primary business address.

In 2006 I was traveling frequently to Mexico because I ran a separate private partnership called Mexico Opportunity Realty Partners. In June 2006 I decided to give up the home office as my business address so that I could receive mail and have it forwarded internationally. To do this I rented office space at 300 Park Avenue, NY, NY which I could also use as frequently or infrequently as needed. In June 2006 I updated many sections on the NFA website to reflect the 300 Park Avenue, NY, NY as a business address for communications purposes (mostly for mail correspondence).

However, since I was still living (infrequently) at 613 4<sup>th</sup> Street in 2006, I was able to keep that address as well as the primary address since that is where I was primarily trading when I was in the US.

When Laurie Senk first made contact with me by phone she said that when she stopped by 613 4<sup>th</sup> Street that it was not an office building. So I explained to her that I was in Mexico on business and was "trading" from an office in Mexico but also using as the "business address" 300 Park Avenue. Furthermore, I said that 613 4<sup>th</sup> Street is where I used to live and where I traded when I was in the US.

The source of confusion is that because living in the New York City metropolitan area is so expensive I was trying to find ways to subsidize the frequent trips to Mexico where I was needed on business. Yet I also needed to have a professional office. In NYC that is a very expensive wish. My solution was to rent an office that I pay by the day of use.

In summary, I had three separate addresses in late 2006 early 2007. The 613 4<sup>th</sup> Street address was the primary address as I could live and work from there. My office files were there in the closet as well as also being scanned onto my computer.

For practical purposes though I had the 300 Park NY, NY address which could be used as little or as much as I needed. I mainly kept this so that I could have meetings in the city. I also had my mail delivered there as they could forward it to me wherever I was in the world for a small fee.

The demand of the Mexico partnership meant that I had spent the most of 2006 in Mexico where I traded from a rented office there.

In conclusion, I should not be in violation of NFA Bylaw 301(i)(a) and NFA Registration Rule 210(a) if I maintained my primary office at 613 4<sup>th</sup> Street (where my records were kept and where I had a trading office set up), a virtual office at 300 Park NY, NY (so that I could receive all mail) and a remote office in Mexico (so that I could trade while away on business). In fact, I had updated parts of the NFA website for my NFA ID to reflect the 300 Park Avenue address.

**COUNT II: VIOLATION OF NFA COMPLIANCE RULE 2-2(f): PROVIDING FALSE AND MISLEADING INFORMATION TO THE NFA**

**Complaint #1)** Black directly contradicted Black's earlier representation to NFA that BFGMF only traded forex.

\*Response: Ruddy Law set up the Black Flag Global Macro Fund in 2004. When they did this they set it up as a CPO so that I could invest in any and all things "Global Macro" as the name implies and this included futures, options and other private placements. Because of the futures and options language I became a member of the NFA in 2004.

The original pool participants were friends and family. These were the same four pool participants at the time of the NFA audit/investigation in 2007. I have only had two other pool participants that joined from personal recommendation (from friends or family). The reason I do not openly solicit new investors is that I look to take people from prior relationships. I have always felt that this creates a stronger family of partners that is less litigious.

In 2006 I was contacted by a representative of Man Financial Group who said that a certain institution was putting together a CTA fund and that they were looking for a "forex" trader. He recommended that I update my CTA and CPO disclosure document to reflect a currency program since he knew that I had only traded "forex" since my inception in 2005. I did make the update to my disclosure document at their suggestion since I did not anticipate trading anything other than "forex" in the near future. Moreover, my previous clients had signed on to the Black Flag Global Macro Fund which they knew would mostly involve "forex" trading and emerging market exposure. The disclosure document the NFA cites in the complaint is the most recent disclosure document on file that references "forex" only.

However, the original pool participants, who were the same members at the time of the investment in Riviera Maya, had joined under the document that stated I was running a "Global Macro" fund that could invest in any and all things.

To clarify matters, in mid-2006 I informed the pool participants (by telephone) that there appeared to be a rift in expectations. I was continuing to trade only "forex" because that is my specialty and also so that my program would fit the profile of the institutional fund. Yet, the members of the CPO of Black Flag Global Macro Fund, LLC were exiting the fund to invest in my real estate partnership called Mexico Opportunity Realty Partners.

I said to the pool participants in 2006 and the NFA during their investigation that in all likelihood I would either continue Black Flag Global Macro Fund as a "Global Macro" fund, or close the CPO and switch to the managed trading program with the aforementioned institutional fund. I expected to do this by June 2007 when the institutional fund was to be operational.

In November 2006 one member (Mr. Yazdanpour) asked if he could invest in a new partnership (Riviera Maya) I had helped set up in October 2006 where other members such as Mr. Liu had withdrawn funds from Black Flag to invest in that partnership.

I said to Mr. Yazdanpour that I believed he could invest in Riviera Maya as I knew that they were looking for a 3-month \$600,000 USD bridge loan for the hotel project they were developing. Mr. Yazdanpour then suggested that he would like to invest in Riviera Maya but that he wanted to do it through Black Flag Global Macro Fund to avoid having to file an extra K1, if it was only for three months.

At that point I asked my accountant Alan Schimmel if this was possible. We looked at the disclosure documents on file for Mr. Yazdanpour, Mr. Liu and Mr. Valter (which was the previous one before the "forex" only language. The disclosure document they signed said Black Flag had no restrictions on the ability to invest in such an instrument). We agreed that this investment could be done under the disclosure document signed, but that there was a clear conflict of interest if I was to collect fees from each entity.

We agreed that to avoid the conflict of interest I should inform the pool participants (which were friends and family) of the intention to invest Black Flag Global Macro Fund in a loan to Riviera Maya. We also agreed that I should not receive any referral fee which was the structure of agreement I had with Mr. Raj Mahadevan, the Managing Member of Riviera Maya.

\*\*\*Attached are three letters from the pool participants (Liu, Yazdanpour, Valter) confirming that I spoke to them in December about Black Flag investing in Riviera Maya.\*\*\*

**Complaint #2)** Black misrepresented his relationship with Riviera Maya.

Response: When Laurie Senk asked me what my relationship was with Riviera Maya I explained to her that I was more or less "arms length" from the investment in the sense that I had met the developers who were looking for a development loan and that I personally knew Mr. Raj Mahadevan who approached me for help in structuring an investment partnership to do the loan. I told her that I was involved in drafting the partnership agreement (which resembled what I had done for Mexico Opportunity Realty Partners), setting up the bank account as well as receiving and sending the funds.

However, as I told Laurie Senk and Cheryl Tulino over the phone, I was not involved in the "day to day" operations. When we set up the partnership in June 2006 Mr. Raj Mahadevan was the sole Managing Member.

My duty was the initial private placement setup and the incoming and outgoing funds transfer (since I would be raising the money). Because of our agreement to split 50/50 the fees involved with Riviera Maya, I listed myself as a General Partner of Riviera Maya on my due diligence document for Black Flag. I did this because of my role to raise the funds.

This is entirely consistent with what I wrote in my Exit Letter to the NFA on June 4:

"My role in Riviera Maya Realty Partners, LLC was to set up the offering documents for Mr. Raj Mahadevan and to refer over any known and qualified investors if capital was needed for a specific investment. I had done this for myself with a similar partnership called Mexico Opportunity Realty Partners, LLC where I was the sole managing member. I raised this money from previously known investors in June 2004. This was the first time the investors in Black Flag Global Macro Fund, LLC became aware that I was involved in a private placement offering for Mexico real estate because I revealed this to them in subsequent conversations. Some of them (Yazdanpour and Liu) became investors in that partnership.

I set up the offering documents for Riviera in June 2006 and I did nothing more until October 2006 when Mr. Mahadevan informed me that there was a possible deal to be done. As I revealed to you, the day to day operations are handled by Raj Mahadevan, the Managing Member. It was he, not I, who did six months Due Diligence on the developer (borrower) to whom Riviera eventually lent money. In October 2006 Mr. Mahadevan informed me that he was ready to proceed to a contract with the developer interested in borrowing money. It was and still is Mr. Mahadevan's responsibility to be in contact with the borrower and assess the progress of the operation. In October, I referred two qualified individuals to be investors in Riviera.

The DD booklet I put together for investors was last updated on October 22, 2006. At this point, with Riviera actually being a viable entity, I listed myself as a General Partner as Mr. Mahadevan agreed that I would share in the incentive fee if the venture was successful because I had referred over two qualified investors.

As I indicated to you, Mr. Mahadevan is the Managing Member and it is he who receives the management fee for his duties in day to day operations as well as the incentive fee, which he agreed to share with me for my help in structuring the offering and referring over clients.

Therefore, as per your request on February 12, 2007 I furnished to you the signature pages of the PPM that Black Flag had signed with Riviera. Then, on February 16, I forwarded to you the entire PPM that was used for Riviera. As I stated to you then, I had furnished that document to Mr. Mahadevan back in June, 2006. Recall that I said to you that Mr. Mahadevan was on business in the U.S. and the PPM document you requested was on his computer at the Mexico office. When he returned he emailed the PPM to me and I forwarded it to you on February 21. In that document he is listed as the Managing Member.

As such, my representation to you that I was involved only in certain aspects of partnership formation and capital raising was entirely accurate. I do not have a role in the day to day operations of Riviera and so while it is reasonable to call myself a General Partner for my part in furnishing offering documents, setting up a bank account and referring some high net worth individuals to be investors, I was not the designated Managing Member of the company to be in charge of lending money or the day to day operations.

My role was organization and fund raising, but not Managing Member of the partnership. I never concealed any information about my involvement from the first moment I was asked about the partnership. Because I did not lie to the NFA, and only made a statement on my due diligence booklet that I was a "General Partner" of Riviera Maya I should not be in violation of NFA Compliance Rule 2\_2(f).

**COUNT III: VIOLATION OF NFA COMPLIANCE RULE 2.5: FAILING TO COOPERATE PROMPTLY AND FULLY WITH NFA.**

**Complaint #1)** On February 8, 2007, during its investigation of Black Flag, NFA requested Black to produce the loan agreement between BFGMF and Riviera. NFA also asked Black for supporting documentation regarding certain disbursements from BFGMF's bank accounts. Black provided documentation for the disbursements, but only the signature page of the loan agreement between BFGMF and Riviera. on February 12th, via e-mail, NFA contacted Black and again requested the complete loan agreement between BFGMF and Riviera. Black did not provide NFA with the complete loan agreement, however, until February 21, 2007, almost two weeks after the initial request.

\*Response: First, when I was initially contacted by Laurie Senk she asked me if I thought it would be better that we conduct the audit at a later date in New York or Hoboken. I said that I was unsure when I would be back in the US for more than a week (assuming an audit from the NFA would take more than a week). Therefore, I said that I would be willing to do the examination from Mexico if she was willing to understand that I was working from a remote office and was traveling heavily between Mexico City and Cancun. I specifically said there could very well be some delays in getting information, especially if I did not have the information on my computer.

Second, that is not an accurate statement. The very first time the NFA requested the loan agreement was in an email from Laurie Senk on February 22, 2007. See below (underline is my own):

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

**From:** Laurie Senk  
**To:** Jes Black -- Black Flag Capital  
**Sent:** Thursday, February 22, 2007 3:20 PM  
**Subject:** RE: NFA audit

Jes,

Thank you for the document. At the conclusion of my meeting yesterday, the legal department has made the following requests:

1. A copy of the loan agreement between Riviera and the land owner which will dictate that interest will be charged at .17%
2. Evidence that the loan was secured

When Laurie Senk asked me for the complete loan agreement I said to her that 1) it was on file at the notary in Cancun, Mexico and that I would have to make arrangements to go there physically with a lawyer, and 2) get a release document from the NFA to get a copy. I suggested that I would email Mr. Raj Mahadevan to send me a scan of the original which he had in his office when he returned to Mexico. I then emailed her to say it would take me about a week to get the document as Mr. Mahadevan was not in the Mexico office.

These types of delays in getting information are caused by the NFA requesting information that is not readily in my possession. Otherwise it would be sent immediately.

As I wrote to the NFA in my Exit Letter explaining the same instance:

..NFA requested additional information regarding the valuation and security of the investment in Riviera. The items you requested were on February 22 were: 1) The loan agreement between Riviera and the land developer; and 2). Evidence that the loan between Riviera and the land developer is secured.

Here is my initial response: From: Jes Black -- Black Flag Capital  
Sent: Thursday, February 22, 2007 3:27 PM  
To: Laurie Senk  
Subject: Re: NFA audit

Laurie,

I will request this information and have it to you by next week if not sooner. The February BFGMFund statement will be available at the end of the month and I will provide to you the other documents as they are available.

Jes

In fact, on the day prior, Laurie Senk communicated to me that the bulk of the investigation should be over. As you can see in the email below:

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

**From:** Laurie Senk  
**To:** Jes Black -- Black Flag Capital  
**Sent:** Wednesday, February 21, 2007 12:55 PM  
**Subject:** RE: NFA audit

Jes,

I did receive the Wachovia representation. I will be contacting them in a few minutes to confirm the info sent verbally. The bulk of the audit will be complete if legal does not have any other questions/concerns regarding the investment.

The remaining portion of the audit will not have the sense of urgency that has been put on the fund valuations. I need to review a few additional items from my original formal checklist that I had sent in the very beginning and help you to revise your Disclosure Document.

I will contact you after my meeting to let you know the status.

Laurie

However, the legal department at the NFA had more questions, which resulted in my having to find more documents that again were not readily in my possession.

For this I should not be in violation for NFA Compliance Rule 2\_5. That rule states: "Each Member and Associate shall cooperate promptly and fully with NFA in any NFA investigation, inquiry, audit, examination or proceeding regarding compliance with NFA requirements or any NFA disciplinary or arbitration proceeding. Each Member and

Associate shall comply with any order issued by the Executive Committee, the Membership Committee, the Business Conduct Committee, the Appeals Committee or any NFA hearing or arbitration panel.”

As you can see from my email to Laurie Senk I stated clearly that, “I will request this information and have it to you by next week if not sooner.” As I said in the Exit Letter, and made very clear during the investigation, Mr. Mahadevan is the Managing Member in charge of day to day operations. He hired the lawyer to draft the contract agreement between Riviera and the borrower and he had the loan agreement and evidence that it was secured. I requested this information from Mr. Mahadevan and he was able to furnish it me on March 9, which was 11 business days after the request by the NFA was first made.

In no instance did I ever seek to delay or not cooperate promptly with the NFA. Laurie Senk knew the circumstances that I was under. I had to request these various legal documents which were not in my possession. In some cases the person that had a certain document was not even in the same country as me.

In light of this, I cannot see how I could be in violation of Rule 2-5, suggesting that I was not cooperating “promptly and fully.” I did everything the NFA asked as fast as I could given the circumstances of the legal department asking for documents that were not in my files (like the loan agreement).

**Complaint #2)** The same complaint of not cooperating promptly and/or fully with the NFA is suggested by not providing the Wachovia Bank statements by March 5, 2006. The Complaint says, NFA also asked Black to produce bank statements for Riviera's bank account at Wachovia (for which Black was an authorized signatory) to determine if such statements reflected principal and interest payments to BFGMF. NFA instructed Black to produce the requested items by March 5, 2007.”

**\*Response:** That statement is completely misleading. First, the request was made on Friday March 2, 2007 to have bank statements, loan agreements, security agreements, and a notarized authorization for Wachovia to open a bank account available for the next business day on Monday, March 5, 2007.

The letter from the NFA on March 2, 2007 states:

In connection with the examination of Black Flag Global Macro Fund, LLC (“the fund”), NFA is requesting that you provide the following documents to ascertain the true value of the fund’s investment in Riviera Maya Realty Partners LLC (“Riviera”):

1. Bank statements and a list of signatories for Riviera’s account held at Wachovia Bank and ending in 2080;
2. A signed and notarized letter authorizing Wachovia Bank to provide information regarding the account ending in 2080 directly to NFA;
3. The loan agreement between Riviera and the land developer; and
4. Evidence that the loan between Riviera and the land developer is secured.



You should immediately provide NFA with any of the requested documents currently in your possession and must provide NFA with all of the requested documents by Noon Monday, March 5, 2007. NFA will retain any documents received as part of this examination in accordance with its standard policies and procedures regarding document retention and confidentiality.

Sincerely,

Cheryl Tulino  
Associate Director, Compliance Dept

As I stated before, I was in Mexico at this time and asked by the NFA on Friday afternoon to get bank statements from the US, then liaise with Wachovia for a notarized letter and also liaise with Mr. Mahadevan's lawyer to get official letters. I was expected to have this by Monday. That is an unreasonable expectation, given that I had to request information from third parties.

When I made the calls to start arranging this material on Friday, I was generally told to call back on Monday. I made all of the NFA's requests on Monday morning when these individuals were back in the office.

The easiest was to request and receive on time were the bank statements. I received them on Tuesday. I then received letters from Mr. Mahadevan's lawyer on Wednesday. However, the main source of delay was the NFA's request to have direct access to the Riviera Maya accounts via a "signed and notarized" letter "authorizing Wachovia Bank to provide information regarding the account ending in 2080 directly to NFA."

On Friday, March 9, 2007, Wachovia had still not granted permission to the NFA to have direct access to the account. Laurie Senk was also in communication with Wachovia about what protocol they needed to be able to have access to the bank statements. Here is the email I sent to Hugo Collado at Wachovia on that morning:

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

**From:** Jes Black -- Black Flag Capital  
**To:** hugo.collado@wachovia.com  
**Sent:** Friday, March 09, 2007 9:13 AM  
**Subject:** need letter ASAP

Hi Hugo,

The NFA is auditing Black Flag and wants to know more about the Riviera Maya acct. I need this by noon today. Please. thank you. Jes Black

The have formerly requested :

1. A signed and notarized letter authorizing Wachovia Bank to provide information regarding the account ending in 2080 directly to NFA

Wachovia sent the requested letter to me that afternoon and I sent twelve (12) documents that afternoon. See the email below:

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

**From:** Jes Black -- Black Flag Capital  
**To:** Cheryl Tulino  
**Cc:** Laurie Senk  
**Sent:** Friday, March 09, 2007 2:39 PM  
**Subject:** Re: 2007EEXM00184, NFA ID# 345533

Cheryl,

Attached are your requested documents.

Please be advised that I will be traveling to Europe from Sunday to the next Monday, March 19. I am then leaving for Panama from March 19-25.

Thank you,

Jes Black

Included in my Friday, March 9 email was a (1) Complete Contract of Riviera Maya, (2) the Signed and Notarized letter authorizing Wachovia to release documents to the NFA, (3) June 2006-February 2007 bank statements, (4) Letter from Riviera Maya attorney explaining how under Mexican Law the contract and following official letters serve as a lien on the property and thus collateral for the loan.

Given the types of request made on a Friday afternoon, I cannot be in violation of Rule 2-5 if I have to request something from a third party on the following business day. There is a normal turnaround when requesting documents from a third party. There is an even longer delay when doing so from a foreign country. Those documents that were requested came in on Tuesday, Wednesday and Friday. I then forwarded the entire list to the NFA on Friday.

**Complaint #3)** To date, NFA has still not received all of the documents that it requested from Black, including the account opening documents for BFGMF, which NFA first requested from Black in January 2007.

\*Response: It is suggested that I somehow failed to hand over the account opening documents for BFGMF to the NFA. That is not correct. I handed over to the NFA every single piece of information regarding BFGMF and Rivera Maya, including the account opening document. There was no mention of any missing or omitted documents in the NFA Exit Interview. Had it been requested I could have sent it again. If the NFA would like this document I can retrieve it from my files.

I cannot be made liable for a missing or omitted document if I have sent it once to the NFA and it is not asked for again in the Exit Interview. There was never any indication by the NFA during the examination that I had not complied fully with the NFA by handing over all documents they requested. I cannot see how I could be in violation of Rule 2-5, suggesting that I was not cooperating either promptly and fully, or that I specifically omitted certain requested items requested by the NFA. That is simply not accurate.

**COUNT IV: VIOLATION OF NFA COMPLIANCE RULE 2-13(a): FAILING TO PROVIDE A CURRENT AND ACCURATE DISCLOSURE DOCUMENT**

**Complaint #1)** CFTC Regulation 4.26 requires, among other things, that if a CPO knows or should know that its disclosure document is materially inaccurate or incomplete, it must correct the defect and distribute the correction to all existing pool participants within 21 calendar days of the date upon which the CPO first knows or has reason to know of the defect. CFTC Regulation 4.24(h) provides that the disclosure document must include a description of the types of interest in which the pool will trade. BFGMF's disclosure document states that the fund will trade only forex. BFGMF, however, made a large non-forex investment in Riviera, a real estate finance firm that purportedly offered collateralized loans. In spite of this variance in trading, participants of BFGMF were not provided with a corrected disclosure document prior to BFGMF's investment in Riviera. CFTC Regulation 4.24(l) provides, in pertinent part, that a disclosure document must include a full description of any actual or potential conflicts of interest regarding the pool on the part of a principal of the CPO. Black received 50% of the management and incentive fees for investors he referred to Riviera, excluding BFGMF. Further, Black represented that he set up a company to act as co-manager of Riviera. Black Flag, however, failed to amend BFGMF's disclosure document to provide BFGMF's participants with this information.

\*Response: Please note as I informed the NFA, in June 2006 I let it be known to my clients that I was not seeking additional members for the CPO, that I was not raising more money, and that I was contemplating closing the CPO in lieu of working a CTA program instead. Laurie Senk stated in a previous email that she was to help me amend my disclosure document which would reflect this point.

Therefore, my response to this allegation is similar to my response to "Black contradicted Black's earlier representation to NFA that BFGMF only traded forex."

Please allow me to condense those points for more clarity:

- 1) The CPO was originally set up to invest in all things "Global Macro" which did not exclude private placements.
- 2) Pool participants were friends and family.
- 3) At the time of December 2006, when the investment in Riviera Maya was made my assets were under \$400,000 and there were only 3 other participants. I had informed them I planned to either do more "Global Macro" investing with the CPO, or file for CPO exemption or close it and only trade forex under a CTA
- 4) The amended disclosure document on file that lists the fund as a "forex" trader was amended when I believed that an institutional fund was going to allocate money to me under the premise that I had thus far only traded "forex" and that they were looking for a "forex" manager.
- 5) While I had amended my disclosure document, all pool participants in December 2006 were "friends and family" and had signed onto Black Flag under the previous disclosure document with the understanding that we could make "Global Macro" investments.

6) I informed all the pool participants by phone as I am in close contact with them.

\*\*\*Attached are three letters from the pool participants (Liu, Yazdanpour, Valter) confirming that I spoke to them in December about Black Flag investing in Riviera Maya.\*\*\*

As I understand it, I did not make a change in writing in my disclosure document as to the investment. The reason I did not do so is that I did not have any pool participants that had become members under the language of "forex" only. Moreover, I not only informed them that I would make this investment, I explained in detail how a loan to Riviera would work. Finally, I informed them that I would likely close the CPO after this investment was made and transition to a "forex" only trading program as a CTA and either keep or disband the idea of a "Global Macro" fund. I had many conversations with Laurie Senk about this as she and Cheryl Tulino were rightly confused when asked what "kind of fund" we were. I said to them that I was likely going to have to create a pure "forex" fund and a "Global Macro" fund to please my various clients.

However, at no time between December 2006 and August 2007 (when I liquidated the Black Flag CPO) did I solicit new investors. Had I done so, I would have amended the disclosure document. For those reasons I should not be in violation with NFA Compliance Rule 2-13(a). My original records of the disclosure document that all pool participants signed (Liu, Yazdanpour, Valter) made no mention of restrictions on investments. By my understanding I did not have to alert them to any changes, because the investment in Riviera Maya was included under that description that they signed. I then took the extra effort to contact each pool participant by phone to have a discussion about what I proposed to do. They agreed, and I made the investment in Riviera.

#### **COUNT V: VIOLATION OF NFA COMPLIANCE RULE 2-13(a): FAILING TO PREPARE POOL PARTICIPANTS STATEMENTS PROPERLY**

**Complaint #1)** The pool participant account statements provided by Black Flag to BFGMF's participants were not prepared in accordance with generally accepted accounting principles, as required by CFTC Regulation 4.22(a). For example, a \$12,000 withdrawal was made from BFGMF's bank account to the personal account of Black, but this withdrawal was not reflected in the limited partner value. Additionally, the account statements did not separately itemize total additions and withdrawals or include a signed oath and affirmation, as required by CFTC Regulations 4.22(a)(1) and (h), respectively. By reason of the foregoing acts and omissions, Black Flag is charged with violations of NFA Compliance Rule 2-13(a).

\*Response: In January, 2007 my bookkeeper (who was a former NFA auditor and working at his own company) took a job with KPMG. When I asked my accountant Alan Schimmel to do the bookkeeping for me, he said that he could not audit his own bookkeeping. I then made numerous requests in January and February for a bookkeeper from Mr. Schimmel, but his firm was being merged and he did not have anyone free to handle my account.

It was during the period of January 2007 and May 2007 that I was without the services of a bookkeeper and that the errors mentioned were made. As soon as the bookkeeper was assigned to me we were able to sort out the accounting errors I made while trying to reconcile the accounts.

While this is not a great excuse, I fully concede that I am not a skilled accountant and when I failed to account for a \$12,000 withdrawal from my capital account, it was simply because I am not an accountant. I am a trader. I suppose if you put an accountant in charge of a trading a hedge fund, there would be errors made as well. For this reason, I ask for forgiveness as it was my bookkeeper that left me and forced me to find a new person to reconcile my statements.

**COUNT VI: VIOLATION OF NFA COMPLIANCE RULE 2-13(a): FAILING TO MAINTAIN ACCURATE AND CURRENT BOOKS AND RECORDS**

**Complaint #1)** Black failed to prepare and maintain a current receipts and disbursements journal, a subsidiary ledger for each participant of BFGMF, a general ledger, or statements of financial condition, and income or loss, for the end of each month. Black is charged with violations of Compliance Rule 2-13(a).

\*Response: The way the account ledger was set up, it did not have a column for additions and withdrawals. Instead, a note was made of the debit/credit in the month it was made, and allocated that month in the capital account. I am not an accountant, and it made sense to me. However, the NFA said that it was not correct. Therefore, the new bookkeeper was made aware of the complaint and the current ledger reflects these requested changes.

**COUNT VII: VIOLATION OF NFA COMPLIANCE RULE 2-13(a): FAILING TO TIMELY FILE ANNUAL POOL FINANCIAL STATEMENT.**

**Complaint #1)** BFGMF's 2006 annual pool statement was required to be filed with NFA by April 2, 2007. The statement was not filed until June 20, 2007. By reason of the foregoing acts and omissions, Black Flag is charged with violations of NFA Compliance Rule 2-13(a).

\*Response: My accountant Alan Schimmel requested an extension to file the annual pool statement due to the ongoing investigation of the NFA into events that transpired from December 2006 to April 2007. Mr. Schimmel stated that he did not want to sign off on Black Flag for 2006 if there was indeed some type of fraud committed with the investment in Riviera. While no fraud was or has ever been committed, the fact is that my CPA did not want to file the audit until the NFA investigation was completed. He said that was to protect him. He and I were both surprised that an extension was not granted following our official letter in March. Because the NFA did not grant us an extension, I was forced to file after the NFA audit was completed in June. We filed on June 20, 2007.

**COUNT VIII: VIOLATION OF NFA COMPLIANCE RULE 2-38(a) FAILING TO ESTABLISH AND MAINTAIN A WRITTEN BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN**

**Complaint #1)** Black Flag did not develop and implement a written business continuity and disaster recovery plan. By reason of the foregoing acts and omissions, Black Flag is charged with violations of NFA Compliance Rule 2-38(a).

\*Response: Compliance Rule 2-38 (b) states that each Member must provide NFA with the name of and contact information for an individual who NFA can contact in the event of an emergency, and the Member must update that information upon request.

I have done this. However, the disaster recovery plan I have is an agreement with the individual named as my emergency contact, to simply liquidate the holdings and work with Alan Schimmel, my CPA to disburse the funds to the clients. Since the CPO is a "one man show" with myself at the head. Any "disaster" that should befall me, should simply mean that the account gets liquidated with minimal disruption to my clients. There would be no other solution. Since it was so simple, that was the arrangement I made – to liquidate the account.

Again, while not written and on file with the NFA, I do have a disaster recovery plan in place and this should not be seen as a violation of the spirit of NFA Compliance Rule 2-38(a).

**COUNT IX: VIOLATION OF NFA COMPLIANCE RULE 2-9(a): FAILING TO SUPERVISE.**

**Complaint #1)** Black Flag failed to retain a signed attestation that it had reviewed its operations using NFA's self-audit questionnaire. Black Flag is charged with violations of NFA Compliance Rule 2-9(a).

\*Response: This was never requested from me by the Laurie Senk. I know that I have filled out the forms on the NFA website such as the annual questionnaire. I thought that was representative of reviewing my operations. I did not know that I had to sign an attestation to myself and keep it on file that I had reviewed my own operations.

**Concluding Statement:**

During the examination, the NFA officers asked for numerous documents to verify that Black Flag was not involved in some type of sham trading activity. 95% of the requests centered around the involvement of Riviera Maya and Black Flag. Both entities have fully cashed out their partners and did so with the most transparency possible.

If I am guilty of one thing it is this – trying to maintain a CPO with the full reporting requirements of NFA membership by myself. The reason it was so difficult is that I did not have the resources to hire a compliance officer or to have a lawyer on retainer. I tried

to educate myself about all the rules and attempted to follow all NFA guidelines to my best understanding.

After operating expenses, in 2005 and 2006 I made approximately \$10,000 profit for my efforts to manage Black Flag Capital Partners, LLC. Because of this I could not even afford to keep on any employees.

The accountant and bookkeepers that have worked for me have generally reduced their fees considering how little money was made in Black Flag. However, the extra time charged by my accountant and new bookkeeper for the time he spent trying to help with the NFA during their six-month investigation cost me the entire gain I made for the 2006 fiscal year.

In light of the circumstances I decided to liquidate the Black Flag Global Macro Fund in August 2007. I then made a redemption to the last pool participant (Liu) and filed for the CPO 4.7 exemption. I am now trying to assess whether to continue trading as a CPO. If the NFA were to seek monetary fine for the accounting errors I may have made in my handling of CPO I am not sure how I would pay it at this point.

If any action taken against me and it were to hinder my ability to earn a living as a fund manager I think it would be a disservice to the clients I have served and to the industry in general. I have always put my clients' needs before my own.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jes Black', with a long horizontal line extending to the right.

Jes Black

Black Flag Capital, LLC  
300 Park Avenue, Suite 1700  
New York, NY 10022  
Tel: 212.572.4873  
Cel: 646.229.5401  
Fax: 646.349.3919  
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email: [jes@blackflagfund.com](mailto:jes@blackflagfund.com)

October 31, 2007

National Futures Association  
Re: Case No. 07-BCC-029

To Whom It May Concern:

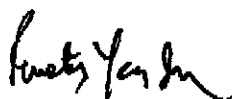
I am a friend of Jes Black and became a subsequent investor in three of his private placement partnerships: Black Flag, Mexico Opportunity and Ranger.

I believe that I may be partly to blame for this current predicament as it was I who suggested to him in December 2006 that I would like to invest in Riviera Maya, but would rather allocate my funds through Black Flag.

Jes Black agreed to do this for me and I sent an additional \$300,000 to Black Flag with the expressed understanding that this would be put to use for a loan to Riviera Maya.

I can't say enough good things about the person he is, and how he has always put my best interest ahead of his own. I am not familiar with the NFA or its compliance rules. But I think that it would be unfair and out of the ordinary to fine Jes Black for making me money.

Sincerely,



Rusty Yazdanpour



October 31, 2007

NFA Compliance Department  
Re: Case No. 07-BCC-029

Dear Sir:

I have known Jes Black for over 4 years and have been aware of his investment deals in Mexico and Panama.

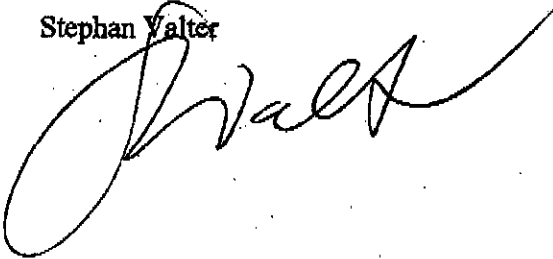
I was informed by Mr. Black in December that he was considering to invest partner money from Black Flag Global Macro into Riviera Maya Realty Partners. We had this conversation by phone and I said to go ahead with it.

After that successful loan to Riviera I cashed out my investment interest in Black Flag this year to invest with him in another real estate development in Panama.

I do not understand why his reputation is in jeopardy for making this successful investment. I would kindly ask you to not take any harsh disciplinary actions against him.

Sincerely,

Stephan Valtor

A large, stylized handwritten signature in black ink, appearing to read 'Valtor', is written over the printed name 'Stephan Valtor'.

October 31, 2007

NFA Business Conduct Committee  
Legal Department: Docketing  
NFA Case No. 07-BCC-029

To Whom It May Concern:

I began investing in Mr. Black's Black Flag Global Macro Fund, LLC in March 2005. He tells me that you are seeking to take disciplinary action against him and his firm for compliance violations. I would like to say a few things on his behalf.

I harbor not the slightest suspicion that Mr. Black has ever intended to harm my financial interests or commit any deception or fraud with respect to my interests. I am fully aware of the inherent risk in placing my money with any money manager, and at no time has Mr. Black concealed these risks. His intentions are honorable and I do not doubt his integrity.

After my initial investment in Black Flag Global Macro Fund, I have continued to invest in others of the investment entities managed by Mr. Black. These include the Mexico Opportunity Realty Partners and the Riviera Maya Realty Partners. So you see there has been no loss of confidence on my part.

Whether Mr. Black has followed or not followed any particular NFA guidelines is not my job to determine. But I am confident that he would not knowingly violate such guidelines with the intent to harm or defraud or deceive his investors, or the NFA. I do know that he has spent considerable time and effort in responding to the NFA's inquiries. Knowing his work ethic, I would expect that those responses have been conscientious.

And so I believe he has already paid a considerable price for the NFA inquiry, and I think it would be gratuitous for the NFA to impose any further financial fine on him as that would serve no societal purpose.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chamond Liu".

Chamond Liu