

**GENERAL COUNSEL'S OFFICE**

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### **BACKGROUND**

3. NetBlack has been an NFA Member CTA since November 2008.

**Answer:** Admit.

4. Netto is also the AP and principal of M3 Capital LLC ("M3"), an NFA Member introducing broker also located in Las Vegas. Netto operates a number of other unregulated companies, including Sniperscope Live Trading LLC and One Shot One Kill Trading LLC, and often speaks about trading strategies and investment opportunities at various industry seminars and conferences.

**Answer:** Admit.

### **APPLICABLE RULES**

5. NFA Compliance Rule 2-6 provides that no person who has been expelled or suspended or is subject to a similar sanction by NFA in a proceeding brought pursuant to Part 3 of NFA's Compliance Rules that temporarily or permanently prohibits the person from NFA membership or affiliation in any capacity with an NFA Member shall hold himself out as a Member in good standing of NFA, or as affiliated with a Member, as the case may be, during the period during which the sanction is in effect. No Member or Associate shall conduct commodity futures or forex business with such a person during the period the sanction is in effect unless authorized by the BCC, Hearing Committee or the Appeals Committee.

**Answer:** NFA Compliance Rule 2-6 speaks for itself and accordingly no answer is required. To the extent an answer is required, Respondents

admit the allegations of Paragraph 5 to the extent they are consistent with the text of NFA Compliance Rule 2-6.

6. NFA Compliance Rule 2-29(b)(5) provides, in pertinent part, that no Member or Associate shall use any promotional material which included any specific numerical or statistical information about the past performance of any actual accounts.

**Answer:** NFA Compliance Rule 2-29(b)(5) speaks for itself and accordingly no answer is required. To the extent an answer is required, Respondents admit the allegations of Paragraph 6 to the extent they are consistent with the text of NFA compliance Rule 2-29(b)(5).

#### **COUNT I**

#### **VIOLATION OF NFA COMPLIANCE RULE 2-6: DOING BUSINESS WITH JES BLACK WHEN HE WAS BARRED FROM NFA MEMBERSHIP.**

7. The allegations contained in paragraphs 1 through 5 are realleged as paragraph 7.

**Answer:** Respondents neither admit nor deny the allegations of paragraph 7, as it is merely a bridge paragraph and not capable of being admitted or denied.

8. NFA reviewed NetBlack's website and noted that the website included the biographies of two individuals - Netto, and an individual by the name of Jes Black ("Black"). Black, who is also known as Jason Black, was listed on the website as a "Strategic Advisor" to NetBlack.

**Answer:** Respondents lack sufficient knowledge to admit or deny the allegations made in sentence one of paragraph 8. Respondents admit sentence two of paragraph 8.

9. Additionally, staff reviewed NetBlack's registration records and noted that the address for NetBlack that was reported to NFA was 300 Park Avenue, Suite 1700 in New York, New York. This was the exact same address of Black Flag Capital Partners LLC ("Black Flag"), a former NFA Member commodity pool operator and CTA for which Black was the sole AP and principal.

**Answer:** Respondents admit sentence one of paragraph 9 in that from May 10, 2009 to May 26, 2009 NetBlack's address for purposes of NFA registration records was 300 Park Avenue, Suite 1700 in New York, New York, a shared office facility used by numerous other companies, some of which are other financial investment firms. Respondents lack sufficient knowledge to admit or deny the remaining allegations made in both sentence one and two of paragraph 9.

10. NFA also discovered a second website purportedly for NetBlack which was similar to the first website reviewed by NFA, as alleged above. This second website identified both Netto and Black as managers of NetBlack and listed Black's phone number as a contact number.

**Answer:** Respondents lack sufficient knowledge to admit or deny the allegations made in both sentence one and two of paragraph 10.

11. Black and Black Flag were named in a previous BCC action alleging, among other violations, that Black Flag and Black provided false and misleading information to NFA, failed to provide an accurate and complete disclosure document; failed to prepare and maintain accurate books and records; failed to cooperate with an NFA audit; and failed to supervise the firm's operations. Black and Black Flag settled that Complaint by agreeing to withdraw from NFA membership and associate membership and not reapply for NFA membership and associate membership or act as a principal of an NFA Member for a period of thirty months. The Decision in that case became effective on February 13, 2008. Thus, Black was still subject to a bar at the time that NFA reviewed NetBlack's website.

**Answer:** Respondents lack sufficient knowledge to admit or deny Paragraph 11.

12. NFA interviewed Netto about NetBlack's operations and its relationship with Black. Netto admitted that he was aware of Black's thirty-month membership bar from NFA. However, Netto claimed that Black did not work for NetBlack and has no ownership or financial interest in the firm and receives no compensation. Netto also claimed that the "Black" part of NetBlack did not refer to Black, but instead was a reference to "going for black," which he said is a term he uses for "going for profits."

**Answer:** Respondents admit the allegations set forth in sentence one. Respondents deny the allegations set forth in sentence two of paragraph 12. Respondents admit both sentences three and four of paragraph 12.



13. According to Netto, NetBlack utilizes Black's trading strategies and considers Black as a "strategic advisor." Netto also stated that he may "consult" Black on trading decisions, but that he ultimately makes all trading decisions himself.

**Answer:** Respondents deny the allegations set forth in sentence one of paragraph 13. Respondents also deny the allegations set forth in sentence two of paragraph 13 because Netto only asks Black about the market in general and not about specific trades.

14. The Interpretive Notice for NFA Compliance Rule 2-6 prohibits an NFA Member from allowing any person barred from NFA to perform any activities for or on the Member's behalf, regardless of whether or not such activities require registration or NFA membership. This prohibition extends to employees, consultants, independent contractors, agents, or unpaid volunteers.

**Answer:** The Interpretive Notice for NFA Compliance Rule 2-6 speaks for itself and accordingly no answer is required.

15. As alleged above, NetBlack and Netto allowed Black - during the time he was barred from NFA - to perform activities on their behalf and act as a consultant and advisor to them.

**Answer:** Respondents deny the allegations alleged in paragraph 15.

16. By reason of the foregoing acts and omissions, NetBlack and Netto are charged with violations of NFA Compliance Rule 2-6.

**Answer:** Respondents deny the allegations alleged in paragraph 16.



Count II

VIOLATION OF NFA COMPLIANCE RULES 2-29(b)(5): FAILING TO  
MAINTAIN SUPPORT FOR ITS RATES OF RETURN

17. The allegations contained in paragraphs 1 through 4 and 6 are realleged as paragraph 17.

**Answer:** Respondents neither admit nor deny the allegations of paragraph 17, as it is merely a bridge paragraph and not capable of being admitted or denied.

18. As part of its investigation of NetBlack, NFA conducted a search for performance information for NetBlack using the PerTrac database. NFA's PerTrac search uncovered monthly performance information purportedly for NetBlack that was for the time period of January 2005 through March 2009 - mostly prior to when NetBlack became registered as an NFA Member CTA in November 2008 - and reflected a total return of 56.88% and an average annual return of 13.33%.

**Answer:** Respondents lack sufficient knowledge to admit or deny both sentence one and sentence two of paragraph 18.

19. NFA staff asked Netto about this performance information and he represented that the performance for the period January 2005 through September 2007 was for Black Flag Global Macro Fund LLC ("the Fund"), which was a commodity pool formerly operated by Black Flag; that the performance for September 2007 through December 2007 was for



accounts that Black had discretion over during that time (according to Netto, he included the performance results for Black because Black's and his 'trading strategy is very similar.');

and that the performance for the period January 2008 through March 2009 was for a discretionary account managed by M3 and an account that NetBlack traded for Netto Trading, which is an entity purportedly owned by Netto and his brother.

**Answer:** Respondents admit that the NFA asked Netto about the performance information and that Netto stated it is the January 2005 through September 2007 performance information from Black Flag Global Macro Fund, LLC, a commodity pool formerly operated by Black Flag. Respondents also admit that the September 2007 through December 2007 performance was for accounts over which Black had discretion, and that the trading strategy for such account is "very similar." Respondents deny that the performance for the January 2008 through March 2009 period was for a discretionary account managed by M3, and deny the account was traded by NetBlack for Netto Trading, but admit that the account was owned by Netto and his brother.

20. Netto told NFA that he obtained the monthly rates of return for the Fund from the Fund's certified financial statements. However, NFA reviewed the certified financial statements for the Fund and noted that the rates of return included therein were annual, not monthly, as reflected in NetBlack's promotional material and reported by PerTrac.



**Answer:** Respondents admit the allegations in the first sentence of paragraph 20 in that Netto misspoke because monthly returns are not included in the audited financials. Respondents lack sufficient knowledge to admit or deny the allegations set forth in the second sentence of paragraph 20.

21. NFA also asked Netto for support for the advertised monthly rates of return, but Netto said that he had no carrying broker statements or other outside documentation to support the advertised rates of return for the Fund and Black.

**Answer:** Respondents deny the allegations made in paragraph 21 because Netto gave them the carrying broker statements for the time period of March 2008 through April 2009. Though Respondent Netto was in possession of the statements from the time period prior to March 2008, they were not readily available.

22. By reason of the foregoing acts and omissions, NetBlack and Netto are charged with violations of NFA Compliance Rule 2-29(b)(5).

**Answer:** Respondents neither admit nor deny paragraph 22 as it is a charging paragraph and not capable of being admitted or denied.



## **STATEMENT OF DEFENSE**

### *Registration History*

23. Netto has been a Member of the NFA since 2002. From June 2002 through April 2006, Netto was a NFA Associate Member, associated person ("AP"), and Principal with Semper Findelis Capital Management, LLC ("Semper"). Netto's status with Semper was withdrawn in April 2006. In November 2003, Netto became an approved Principal with M3 Capital, LLC, and in January 2004 he also became a NFA Associate Member and AP, which membership he continues to hold until today. From 2006 through March 2009, Netto was a Principal, AP and NFA Associate Member with Triple Witch Metals Management, LLC ("Triple"). NetBlack became a CFTC registered CTA and NFA Member in November 2008, at which time Netto became an approved Principal, NFA Associate Member, and AP thereof.

### *Respondent's Dealings with Clients*

24. Respondent Netto is a sought after well-respected speaker, having been retained to date as an event speaker by institutions such as the CME Group ("CME"), Eurex Frankfurt AG, and the Intercontinental Exchange.
25. Since 2002, Netto has had power of attorney over several client accounts and has never had a complaint from any clients. Currently, and during the time period in question, Netto, as operator of M3 Capital, LLC, has power of attorney over one client account. The account holder has never complained to Netto about Netto's management of his investments.



*NetBlack, Netto, and the NFA*

26. Respondents concede that a temporary web site appeared on cruzazul.tv reflecting Jes Black as "strategic advisor", but Respondents were unaware of that web site and the information published on it until being notified thereof by the NFA. Furthermore, Respondents have no connection or relationship with the website or those running it. Respondents were also unaware of the Jes Black information on their own website until notification of such by the NFA. The website development company for NetBlack's website posted the content inadvertently and without Respondents' permission. There was no intent to market this web site, furthermore it has since been taken down.
27. In September 2008, NFA conducted an exam of M3's operations. As with any audit, NFA noted a routine infraction, having cited M3 for aggregating on one order a customer and non-customer account. In the spirit of cooperation, Respondent Netto acted swiftly to correct the deficiency found by the auditors.
28. In May of 2009, NFA conducted an exam of both M3's and NetBlack's operations. NFA found a number of alleged technical deficiencies, including issues with the firm's registration status and promotional material. In the spirit of cooperation, Respondents acted swiftly during the audit to correct any deficiencies found by the auditors and implemented all of their recommendations.



29. Respondent John Netto knows Jes Black. Netto discusses the market in general terms with Black but does not consult with him on specific trades. Respondents do not make any effort to "mask" this fact. However, Netto has never, to date, paid any remuneration to Black (and NFA did not note evidence of any remuneration from its exam of NetBlack).
30. Netto, included the performance results for Black because Black's and his trading strategy is very similar. Having garnered an intimate familiarity with Black's trading after years of discussions regarding the markets with Black, Netto trades in a very similar style, taking the same trading methodology as Black but making improvements by seeking significantly lower commissions, employing the system to trade financial instruments other than Forex.

#### *Conclusion*


31. As a result of the forgoing, Respondents do not believe that its overall conduct merits any monetary or registration sanction by the Business Conduct Committee. Respondents lacked the intent to have Jes Black acting for or on behalf of the firm in connection with its business. Over the past two years, Respondent Netto has undergone two NFA examinations and has responded rapidly to any cooperation with the NFA (almost every issue was rectified immediately and several months prior to the complaint), which should be taken into account in assessing the charges and any sanction deemed necessary for those small violations to which it admitted above. Respondents have one client and he has never



complained. Lastly, Respondents would call to the attention of the Business Conduct Committee Respondent Netto's stellar compliance record since he was first registered in 2002, never before having been charged with violations of either the CFTC regulations or NFA rules. The issues Netto has had with the NFA does not warrant any sanctions, as there have been no material issues in the exams.

WHEREFORE, Respondents respectfully request that the Panel: (i) limit this proceeding to deciding on the appropriate sanction for the violations of Count I; (ii) dismiss Count II of the complaint; and (iii) grant Respondents whatever relief that is necessary and appropriate.

NetBlack Capital, LLC  
And John Francis Netto

By:   
Ruddy Law Office  
Mark E. Ruddy, Attorney  
for Respondents

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### CERTIFICATE OF SERVICE

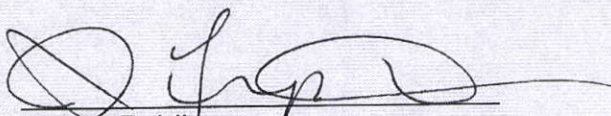
I, Mark Ruddy, on oath state that on September 24, 2009, I served copies of the attached Answer, via email as follows:

National Futures Association  
Attention: Legal Department - Docketing  
300 South Riverside Plaza, Suite 1800  
Chicago, Illinois 60606  
docketing@nfa.futures.org



Mark E. Ruddy

Subscribed and sworn to before me  
this 24th day of September, 2009.

  
Notary Public

Jessica I. Triplett  
Notary Public, District of Columbia  
... Commission Expires 12/14/2013