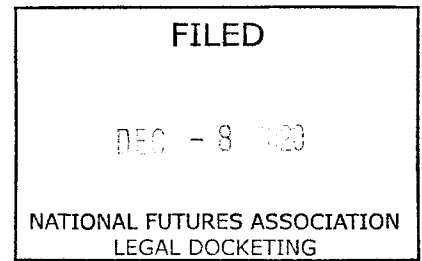


**NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE**



In the Matter of:)

JDN CAPITAL, LLC)
(NFA ID #516653))

and)

JOSHUA DAVID NICHOLAS)
(NFA ID #498951))

NFA Case No. 20-BCC-016

COMPLAINT

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association (NFA), and having found reason to believe that NFA Requirements are being, have been, or are about to be violated and that the matter should be adjudicated, this Committee issues this Complaint against JDN Capital, LLC (JDN Capital) and Joshua David Nicholas (Nicholas).

ALLEGATIONS

JURISDICTION

1. From October 10, 2018 to November 16, 2020, JDN Capital was a Member of NFA. As such, JDN Capital was required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.
2. From October 10, 2018 to November 16, 2020, Nicholas was an NFA Associate. As such, Nicholas was required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof. JDN Capital is liable for

violations of NFA Requirements committed by Nicholas in the course of his activities on behalf of the firm.

BACKGROUND

3. JDN Capital is located in Stuart, Florida. JDN Capital was registered with the Commodity Futures Trading Commission (CFTC) as a commodity trading advisor (CTA) from October 9, 2018 to November 16, 2020, when the firm withdrew its CFTC registration and NFA membership statuses.
4. Nicholas is the sole owner of JDN Capital. Nicholas also was the sole associated person (AP) and principal of JDN Capital from October 9, 2018 to November 16, 2020, when his CFTC registration and NFA membership statuses were withdrawn.
5. At various times between August 2016 and May 2017, Nicholas was an AP of Fortune Trading Group LLC, a firm permanently barred from NFA membership for sales practice fraud and abusive trading practices based on a 2017 Complaint issued by this Committee. From February 3, 2020 through July 31, 2020, Nicholas was a registered securities broker of a FINRA member firm.
6. As a CTA, JDN Capital offered one trading program, called the Green Leaf Trading Program. In 2019 and 2020, JDN Capital's managed account customers trading the Green Leaf Trading Program suffered significant losses, and JDN Capital ceased trading the customers' accounts.
7. On August 26, 2020, one of JDN Capital's former managed account customers telephoned NFA's Information Center and reported that he and his wife had entered into a promissory note with JDN Capital and Nicholas for an "unregulated security." (The husband and wife, who are both retired, are referred to hereafter

as "Mr. and Mrs. Doe.") Mr. Doe explained that he and his wife had been receiving interest payments from JDN Capital, but they had not received monthly statements from Nicholas or heard from him over the past two weeks. Mr. Doe also mentioned that he was growing suspicious of Nicholas and the promissory note agreement with JDN Capital. Mr. Doe's call caused NFA to commence an investigation concerning JDN Capital and Nicholas's dealings with Mr. and Mrs. Doe.

8. NFA sent a Request for Information (RFI) to its futures commission merchants (FCMs) Members and learned that JDN Capital had no active customer accounts since March 2020.
9. The RFI results included information on the futures trading accounts that JDN Capital managed previously for Mr. and Mrs. Doe. A review of the Does's FCM trading records revealed one of the accounts that JDN Capital had managed for them lost approximately \$2 million in February 2020 and incurred a debit balance of approximately \$250,000.
10. To obtain further information about their dealings with JDN Capital and Nicholas, NFA contacted Mr. and Mrs. Doe, who referred NFA to their attorney. The attorney indicated that Nicholas had travelled to Mr. and Mrs. Doe's home in North Carolina and promoted the promissory note as a way to make up for some of the futures trading losses they had sustained in February 2020. According to the attorney, Nicholas recommended that Mrs. Doe invest the assets of a family trust established for the benefit of Mrs. Doe and her disabled adult sister (hereafter

called "Mrs. Doe's Family Trust") in an investment strategy that Nicholas claimed would guarantee a profit of at least 17% annually.

11. Mr. and Mrs. Doe's attorney informed NFA that in early May, Mrs. Doe loaned \$300,000 from Mrs. Doe's Family Trust to JDN Capital. In return, Mrs. Doe received a promissory note dated April 30, 2020, in which JDN Capital promised to repay the principal of \$300,000 to Mrs. Doe's Family Trust, together with annual interest of 17%, with the final payment to be made on May 1, 2021.
12. The attorney provided NFA with a copy of the promissory note. According to the note, the loan's purpose was to secure the purchase of securities with title in the name of JDN Capital. The attorney also provided NFA with a bank statement for Mrs. Doe's Family Trust, which showed the transfer of \$300,000 to JDN Capital on May 4, 2020.
13. According to the attorney, Nicholas also provided Mr. and Mrs. Doe with a June 2020 activity statement from a well-known, non-Member investment firm for an account in the name of JDN Capital to evidence the investment of the \$300,000. The attorney provided NFA with a copy of the June activity statement and a July 13, 2020 e-mail from Nicholas that accompanied the statement.
14. The activity statement was heavily redacted to conceal the account value, information about any cash activity in the account, and virtually all information concerning the investments. However, the unredacted portions of the statement showed dividends of almost \$90,000 (year-to-date) and a 12.82% return for June.
15. In the July 13th e-mail that accompanied the activity statement, Nicholas explained the statement showed "current positions" and included redactions to "maintain

confidentiality." Nicholas also claimed in the e-mail that the "portfolio" had gained about 8% and was earning a 12.8% yield.

16. NFA removed the redactions that obscured portions of the activity statement and noticed significant discrepancies in the underlying statement. For example, certain columns in the statement did not sum properly, and stock symbols did not match the listed securities.
17. These discrepancies raised questions about the statement's legitimacy and, therefore, NFA contacted the investment firm. The investment firm informed NFA that the account number did not correspond to any account at the firm and confirmed that it had no accounts in the name of JDN Capital and none in the name of, or controlled by, Nicholas. NFA subsequently asked Nicholas to provide the name and contact information for the account representative at the investment firm; however, Nicholas failed to provide the requested information.
18. As part of its investigation, NFA also spoke to Mr. and Mrs. Doe. During the call, the Does indicated that Nicholas had repeatedly told them before they entered into the loan that they could obtain a return of the principal at any time. However, when Mrs. Doe requested a return of the principal on July 17, 2020, Nicholas denied her request, saying she could not end the investment until May 1, 2021, according to the promissory note. On August 3, Mrs. Doe again sought to terminate the promissory note, but Nicholas never responded to Mrs. Doe.
19. The RFI results, referred to above in paragraph 8, also revealed that Nicholas had an open personal trading account at a Member FCM (FCM A). Records that FCM A provided to NFA for Nicholas's personal trading account revealed that Nicholas

had traded in the account at various times commencing in April 2018 and engaged in futures trading when JDN Capital was active as a CTA. Between April 2018 and April 2020, Nicholas deposited approximately \$80,000 into the account and withdrew over \$40,000. As of April 30, 2020, the account balance had declined to approximately \$2,300 due to trading losses.

20. More importantly, Nicholas's account statements showed that in early May – soon after JDN Capital received the loan proceeds from Mrs. Doe's Family Trust – Nicholas made four deposits that totaled \$225,000 to his trading account at FCM A. All of the deposits came from Nicholas's personal bank account.
21. Because the timing of the \$300,000 loan coincided with the deposit activity in Nicholas's trading account at FCM A, NFA conducted a telephone interview of Nicholas on September 4, 2020. Nicholas admitted that JDN Capital entered into a one-year promissory note with Mrs. Doe's Family Trust, which Nicholas represented was set up with a guaranteed interest rate of 17%. Nicholas also admitted that Mrs. Doe had requested a return of the principal, but he refused the request because the loan had a term of one year and "liquidating the positions" would not be beneficial to Mr. and Mrs. Doe.
22. NFA requested a copy of the promissory note during the investigation, but Nicholas failed to provide the promissory note to NFA, despite repeated requests.
23. During the interview, Nicholas claimed that he used the loan proceeds to make investments in "securities and hard assets" in the name of JDN Capital, not Mrs. Doe's Family Trust. However, Nicholas refused to provide NFA with any documents to support his representations – including any account statements to

show the investment of the loan proceeds – because he did not want NFA to "steal his strategy." Nicholas also declined to confirm to NFA the amount of the loan, though he referenced \$300,000 during the call.

24. Nicholas claimed during the September 4th call that the loan proceeds had been deposited into a JDN Capital bank account. Therefore, NFA requested copies of the JDN Capital bank account statements, which the firm and Nicholas failed to provide to NFA.
25. NFA also asked Nicholas to explain the source of the \$225,000 in deposits to his personal trading account at FCM A to confirm that JDN Capital and Nicholas had not misused the loan proceeds, contrary to the terms of the promissory note. In response, Nicholas claimed the deposits to his account at FCM A consisted of assets from his personal savings, including cash and funds from his money market and cryptocurrency accounts. NFA asked Nicholas to provide his personal bank statements to demonstrate the source of these funds, as well as other documentation to substantiate his representations (e.g., money market account statements). However, Nicholas failed to provide these documents to NFA.
26. During the call, Nicholas also referred to "promissory notes" which caused NFA to believe that he had solicited loans and entered into promissory notes with other lenders. However, when NFA attempted to question him further on this issue, Nicholas refused to confirm whether JDN Capital and he had entered into other promissory notes.
27. In addition to failing to provide NFA with documents and information to corroborate his representations, Nicholas willfully provided misleading information NFA. For

example, during the September 4th call, Nicholas claimed that he did not begin trading in his personal account at FCM A until after JDN Capital's managed accounts closed. However, as alleged above, Nicholas was actively trading in his personal account while JDN Capital was operating as a CTA.

28. Nicholas also claimed during the call that he was still employed by the FINRA member firm as a registered representative, even though FINRA's BrokerCheck system showed that Nicholas's employment with the FINRA member firm had ended on July 31, 2020. When NFA confronted Nicholas with the information reported on BrokerCheck, he admitted he was no longer an employee of the FINRA member firm. However, Nicholas claimed he was still working for the firm "in a different capacity," without giving any details about his alleged position.
29. In e-mails to JDN Capital and Nicholas after the phone call concluded, NFA reiterated its requests for the above-mentioned documents and information. However, JDN Capital and Nicholas failed to produce the documents and information that NFA requested, such as their bank records and other documentation to show what JDN Capital and Nicholas did with the loan proceeds, including whether Nicholas had misused the money to funds futures and other trading in his personal account at FCM A. Nicholas also provided misleading information to NFA during the investigation and likely provided the Does with a fabricated activity statement to substantiate the investment of the loan proceeds.
30. Accordingly, on September 11, 2020, NFA's Executive Committee authorized a Member Responsibility Action against JDN Capital and an Associate

Responsibility Action against Nicholas (referred to collectively as "the MRA/ARA") based on their failure to cooperate with NFA.

31. The MRA/ARA suspended JDN Capital and Nicholas from NFA membership and associate membership, respectively, and imposed several restrictions on their activities, including prohibiting them from disbursing or transferring any funds without NFA's prior approval and restricting their trading to liquidating existing positions only.
32. On November 9, 2020, approximately two months after the issuance of the MRA/ARA, Nicholas offered to repay the loan to Mrs. Doe's Family Trust using money from his personal trading account at FCM A, in exchange for having the restrictions imposed under the MRA/ARA terminated.
33. According to the attorney for the Does, Nicholas offered to pay a lump sum of \$265,000 upfront, with the remaining \$35,000 repaid in monthly installments over the next five years. The attorney informed NFA that his clients were willing to accept the offer, with the stipulation that FCM A make the payment to the attorney's client trust account for the benefit of the Does, rather than having the funds go directly to Nicholas to make the repayment.
34. Based on Nicholas's offer, NFA contacted FCM A. FCM A indicated that the remaining positions in Nicholas's account had been liquidated. In addition, although the account balance had fluctuated since the issuance of the MRA/ARA, trading gains had increased the account balance. According to FCM A, the balance in Nicholas's account totaled more than \$307,000, as of the close of

- business on November 9, 2020. FCM A also agreed to release funds from Nicholas's trading account to the attorney's client trust account, if directed by NFA.
35. Since Nicholas had enough funds in the personal account to repay the full loan amount, staff informed Nicholas that NFA would recommend to the Executive Committee to lift the restrictions under the MRA/ARA as long as \$300,000 (the full amount of the loan) was transferred from his trading account to the attorney for the Does. Nicholas agreed to these requirements, so NFA authorized FCM A to make the disbursement to the Does's attorney. On November 16th, the attorney confirmed he had received the funds from FCM A to repay the loan.
36. Accordingly, on November 16, 2020, NFA issued a "Notice and Order Terminating Member Responsibility Action and Associate Responsibility Action under NFA Compliance Rule 3-15" (Notice and Order) because, among other reasons, Nicholas had repaid the \$300,000 loan to the Does and NFA had obtained information that it sought during the investigation, though not from JDN Capital and Nicholas.
37. The Notice and Order terminated the MRA/ARA's restrictions against JDN Capital and Nicholas and lifted all restrictions imposed on them by the MRA/ARA, including, but not limited to, the suspension from NFA membership and associate membership and the trading restrictions. On the same day, the membership and registration withdrawals of JDN Capital and Nicholas became effective.

APPLICABLE RULES

38. NFA Compliance Rule 2-2(f) prohibits a Member or Associate from willfully submitting materially false or misleading information to NFA or its agents.

39. NFA Compliance Rule 2-4 requires Members and Associates to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business and swaps business.
40. NFA Compliance Rule 2-5 requires, in pertinent part, that each Member and Associate shall cooperate promptly and fully with NFA in any NFA investigation, inquiry, audit or examination, and requires each Member and Associate to comply with any order issued by the Executive Committee.

COUNT I

VIOLATIONS OF NFA COMPLIANCE RULES 2-2(f) AND 2-5: WILLFULLY PROVIDING FALSE AND MISLEADING INFORMATION TO NFA: FAILING TO COOPERATE PROMPTLY AND FULLY WITH NFA DURING ITS INVESTIGATION AND FAILING TO COMPLY WITH THE MRA/ARA.

41. The allegations contained in paragraphs 1 through 5, 8 through 38 and 40 are re-alleged as paragraph 41.
42. As alleged above, JDN Capital and Nicholas failed to cooperate in NFA's investigation by refusing to produce their bank records and other documents and information that NFA had requested from them in order to determine, among other things, what JDN Capital and Nicholas did with the proceeds of the loan from Mrs. Doe's Family Trust.
43. Although Nicholas eventually provided NFA with a copy of the promissory note, he waited until after the MRA/ARA was issued to do so. Further, the copy of the promissory note that Nicholas submitted to NFA was heavily redacted to obscure its material terms.
44. Nicholas also failed to cooperate with the terms of the MRA/ARA by violating the MRA/ARA's trading restriction. As alleged above, the MRA/ARA limited JDN

Capital and Nicholas's trading to liquidating existing positions only. However, NFA learned from FCM A that Nicholas had engaged in a significant amount of trading in his personal account on September 14, 2020, after the MRA/ARA was issued. The trading consisted of both securities and futures, including the purchase and sale of numerous e-mini Nasdaq 100 contracts.

45. As described above, Nicholas also willfully provided false and misleading information to NFA regarding, for example, the trading and funding of his personal account at FCM A and his employment status with the FINRA member firm.
46. By reason of the foregoing acts and omissions, JDN Capital and Nicholas are charged with violating NFA Compliance Rule 2-5, and Nicholas is charged with violating NFA Compliance Rule 2-2(f).

COUNT II

VIOLATIONS OF NFA COMPLIANCE RULE 2-4: FAILING TO OBSERVE HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE.

47. The allegations contained in paragraphs 1 through 4, 6 through 7, 9 through 18, 20 through 21, 23 through 25, 32 through 35 and 39 are re-alleged as paragraph 47.
48. NFA Members and Associates are required to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business. However, as described above, JDN Capital and Nicholas engaged in a course of conduct involving Mr. and Mrs. Doe that contradicted the high standards of commercial honor and the just and equitable principles required of NFA Members and Associates.

49. Although the promissory note stated that the loan's purpose was to secure the purchase of securities with title in the name of JDN Capital, information NFA has obtained tends to support that JDN Capital and Nicholas misused a portion of the loan proceeds to fund futures and other trading in Nicholas's personal account at FCM A, contrary to the promissory note.
50. As alleged above, the bank statement for Mrs. Doe's Family Trust showed the transfer of \$300,000 to JDN Capital on May 4, 2020. Information obtained from FCM A confirmed that the \$225,000 in deposits to Nicholas's trading account began on May 5, 2020 – one day after JDN Capital received the \$300,000 loan – and came from Nicholas's personal bank account. Nicholas also utilized the funds in his personal trading account at FCM A to repay the full loan amount to Mrs. Doe's Family Trust.
51. Although NFA conditioned the lifting of the MRA/ARA's restrictions on Nicholas repaying the full loan amount, his dependence on the assets in the personal trading account at FCM A as the sole source of money to repay the \$300,000 loan suggests his improper use of the loan proceeds.
52. Nicholas's inequitable conduct towards the Does is illustrated further by his offer to repay the loan through installment payments, despite having access to more than \$300,000 in his trading account.
53. In addition to misusing the loan proceeds, Nicholas misled the Does before they entered into the loan by, for example, representing to the Does that they could obtain a return of the loan principal at any time.

54. Nicholas also misled the Does after they entered into the loan by providing them with false and misleading information about the investment of the \$300,000. As alleged above, Nicholas provided the Does in July 2020 with an e-mail and activity statement to substantiate the investment of the loan proceeds. Because of concerns the activity statement was falsified, NFA requested the non-Member investment firm to confirm the authenticity of the statement that Nicholas had provided to the Does.
55. After the issuance of the MRA/ARA, the non-Member investment firm officially confirmed to NFA that the activity statement, which Nicholas had given to the Does, was fraudulent. The firm indicated the account number referenced on the statement belonged to a different customer and that the account had been closed for a few years.
56. By reason of the foregoing acts and omissions, JDN Capital and Nicholas are charged with violating NFA Compliance Rule 2-4.

PROCEDURAL REQUIREMENTS

ANSWER

You must file a written Answer to the Complaint with NFA within thirty 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. 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

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 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 \$500,000 for each violation found; and
- (e) order to cease and desist or any other fitting penalty or remedial action not inconsistent with these penalties.

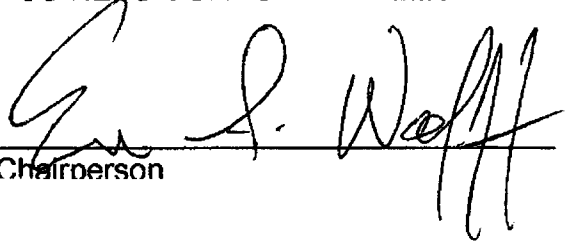
The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act. Each Respondent in this matter who applies for registration in any new capacity may be denied registration based on the pendency of this proceeding.

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**

Dated: 12/8/2020

By: 
Chairperson