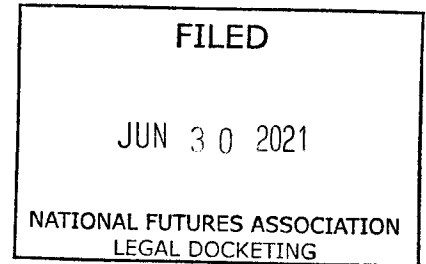


**NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE**



In the Matter of:)
)
ED&F MAN CAPITAL MARKETS LIMITED) NFA Case No. 21-BCC-010
(NFA ID #354008),)
)
Respondent.)

COMPLAINT

Having reviewed the investigative report submitted by the OTC Derivatives Department of National Futures Association (NFA), and having reason to believe that NFA Compliance Rules (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 ED&F Man Capital Markets Limited (ED&F Man).

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, ED&F Man was provisionally registered with the Commodity Futures Trading Commission (CFTC) as a swap dealer (SD) and approved as a Member of NFA. As such, ED&F Man was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.

BACKGROUND

2. ED&F Man is located in London, U.K. The firm has been provisionally registered with the CFTC as an SD and approved as a Member since 2014.

3. As an SD, ED&F Man transacts foreign exchange (FX) and commodity (e.g., metals) swaps.
4. In 2018, NFA's Board of Directors determined, subject to limited exceptions, to require individuals acting as associated persons (APs), as defined in subsection 6 of the Associated Person definition under CFTC Regulation 1.3, to meet a minimum proficiency standard that tests the individual's market knowledge and knowledge of regulatory requirements involving swaps activities.
5. Accordingly, NFA's Board approved the development and implementation of the Swaps Proficiency Requirements (or the Requirements) in the form of an online training and testing program.
6. NFA's Swaps Proficiency Requirements obligated Member SDs to ensure individuals acting as an AP on the SD's behalf satisfied the Swaps Proficiency Requirements by January 31, 2021 (the Compliance Date).
7. However, as alleged in more detail below, ED&F Man failed to ensure that all individuals acting as APs on its behalf satisfied the Requirements by the Compliance Date.

APPLICABLE RULES

8. NFA Compliance Rule 2-24 provides, in pertinent part, that no SD shall have associated with it any person who is an AP, as defined in subsection 6 of the Associated Person definition under CFTC Regulation 1.3, who has not satisfied NFA's Swaps Proficiency Requirements set forth in the Interpretive Notice entitled, "Proficiency Requirements for Swap APs" (hereafter, the Proficiency Interpretive Notice).

9. CFTC Regulation 1.3 defines an AP of an SD as a partner, officer, employee, agent (or any natural person occupying a similar status or performing similar functions), in any capacity that involves the solicitation or acceptance of swaps (other than in a clerical or ministerial capacity) or the supervision of any person or persons so engaged.
10. The Proficiency Interpretive Notice confirms January 31, 2021 as the Compliance Date for individuals to satisfy the Requirements to continue acting as an AP at an SD after the Compliance Date and requires SD Members to ensure that any individual seeking to act as an AP on behalf of the SD after the Compliance Date has satisfied the applicable Track of the Requirements (as required by the AP's functions) prior to engaging in swaps activity at the SD.

COUNT I

VIOLATIONS OF NFA COMPLIANCE RULE 2-24: FAILURE TO COMPLY WITH THE QUALIFICATION TESTING OF ASSOCIATED PERSONS.

11. The allegations contained in paragraphs 1 through 10 are realleged as if fully stated herein thereof.

Background on NFA's Swaps Proficiency Requirements

12. As alleged above, NFA's Board approved the Swaps Proficiency Requirements in the form of an online training and testing program for individual APs of NFA Member SDs who are engaged in CFTC regulated swaps activities.
13. In general, APs at SDs are individuals in the sales and trading area who negotiate, price and/or execute swaps on the SD's behalf and/or manage the SD's swaps related market risk, and individuals who supervise individuals acting as APs at the SD.

14. Individuals acting as APs at SDs are not required to register with the CFTC and are not NFA Associates.
15. Since NFA could not impose the Swaps Proficiency Requirements directly on the individuals acting as APs at SDs, NFA amended Compliance Rule 2-24 to prohibit each SD Member, including ED&F Man, from having associated with it any person acting as an AP who has not satisfied NFA's Swaps Proficiency Requirements. This rule change became effective on January 31, 2020.
16. The Proficiency Interpretive Notice, which also became effective on January 31, 2020, specified January 31, 2021 as the Compliance Date for individuals to satisfy the Requirements to continue acting as an AP of the SD after that date.
17. Since at least December 2018, NFA has made extensive efforts to promote the Requirements and educate SD Members and individuals acting as APs at SDs about them.
18. Through numerous Notices to Members issued since March 2019, NFA explained how and to whom the Swaps Proficiency Requirements apply. Several of the Notices made clear that individuals acting as APs had to complete the Swaps Proficiency Requirements by the Compliance Date to continue acting as an AP.
19. NFA also established a Swaps Proficiency Requirements section on its website and, since March 2019, has published FAQs on the website to help SD Members and individual APs understand their regulatory obligations and to answer commonly asked questions about the Requirements.

20. To provide sufficient time for individuals acting as APs at SDs (and their supervisors) to satisfy the Requirements, NFA launched the online Swaps Proficiency Requirements training and testing program in January 2020, giving individuals acting as APs at SDs and their supervisors a full year before the Compliance Date to satisfy the Requirements.

ED&F Man's Failure to Comply with the Requirements

21. In March 2021, NFA commenced its most recent exam of ED&F Man to, among other things, review the firm's compliance with the Swaps Proficiency Requirements.
22. NFA obtained trade data from the firm for November 1, 2020 through January 31, 2021, which included the names of the traders associated with each transaction.
23. According to NFA's records, approximately 20 of the traders listed in the firm's trade data had not completed the Requirements.
24. NFA sent an e-mail to ED&F Man on March 26, 2021 to obtain more information about those 20 individuals (*e.g.*, whether they were acting as APs after January 31, 2021 without completing the Requirements) and to remind ED&F Man that individuals acting as APs at the firm must stop engaging in swaps activities (*e.g.*, trading) until they satisfy the Requirements.
25. ED&F Man provided an initial response to NFA on April 1st, which indicated the firm was still reviewing the status of close to half of the 20 individuals whom NFA had identified and represented that both ED&F Man's CEO and its Head of Compliance had been advised that employees who had not satisfied

- the Requirements could not engage with a U.S. person in swaps activities or supervise an employee engaging with a U.S. person in swaps activities.
26. Approximately one week later, ED&F Man provided an additional response to NFA, in which the firm admitted two APs were currently trading with a U.S. counterparty (which is a Member SD) without satisfying the Requirements and stated the APs would continue trading with the U.S. counterparty without satisfying the Requirements since suspending their activity "could harm the client."
 27. In a subsequent phone call, ED&F Man personnel reiterated that the firm accepted the regulatory risk of the two APs continuing to trade with a U.S. counterparty without satisfying the Requirements.
 28. On April 16th, ED&F Man provided NFA with the names of several individuals who transacted swaps with U.S. counterparties after the Compliance Date, as well as the names of supervisors, who had not satisfied the Requirements.
 29. According to the firm, three individuals still had not fulfilled the Requirements (including one of the APs, discussed above, whom the firm permitted to continue trading with a U.S. counterparty).
 30. Since ED&F Man continued to permit individuals to act as APs without satisfying the Requirements, NFA sent a letter to the firm on April 27, 2021.
 31. The April 27th letter notified ED&F Man of its apparent violation of NFA Compliance Rule 2-24; instructed the firm to immediately prohibit every individual who should have, but had not, satisfied the Requirements from acting as an AP on the firm's behalf until the individuals fulfilled the Requirements; and required

ED&F Man to respond to NFA, describing the circumstances that led to the firm's apparent rule violation and the changes the firm has made or would make to its procedures and/or internal controls to ensure ED&F Man does not permit any individual to act as an AP on its behalf and engage in swaps activities with a U.S. person until the individual has satisfied the Requirements.

32. ED&F Man responded to NFA with an e-mail on April 27th, followed by a more detailed letter on May 4, 2021 and a spreadsheet that identified the firm's APs as of April 27, 2021. In both the e-mail and letter, ED&F Man acknowledged the firm's violation of Compliance Rule 2-24.
33. NFA reviewed the spreadsheet and other information ED&F Man provided and found the firm had 22 APs as of January 31, 2021 who were required to satisfy the Requirements by the Compliance Date.
34. These APs consisted of 14 individuals who acted as APs at the firm by engaging in swaps activity with U.S. persons, plus eight individuals who were APs by virtue of supervising APs engaging in swaps activity with U.S. persons on the firm's behalf.
35. ED&F Man permitted four of the 14 APs (or almost 30%) to transact swaps on the firm's behalf with U.S. persons after the Compliance Date without satisfying the Requirements.
36. ED&F Man also allowed three of the eight supervisors (or almost 40%) to oversee APs who transacted swaps with U.S. persons after the Compliance Date without satisfying the Requirements.

37. According to the spreadsheet and NFA's records, the individuals acting as APs satisfied the Requirements as of April 23, 2021, the deadline the firm gave them to finish or be prohibited from doing further swaps business with U.S. persons.
38. By reason of the foregoing acts and omissions, ED&F Man is charged with violating NFA Compliance Rule 2-24.

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 Docketing Department

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; or
- (e) order to cease and desist or any other fitting penalty or remedial action not inconsistent with these penalties.

**NATIONAL FUTURES ASSOCIATION
BUSINESS CONDUCT COMMITTEE**

Dated: June 30, 2021

By: 
Chairperson

m/cxc/Complaints/EDF Man Complaint final