

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of)
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)

CFTC DOCKET NO. SD 09-02

LINUXOR ASSET MANAGEMENT LLC,)
ABBAS A. SHAH, LINUXOR CAPITAL)
MANAGEMENT LLC,)

Registrants.)
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)
)

Office of
Proceedings
Proceedings Clerk

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Received
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NOTICE OF INTENT TO REVOKE REGISTRATION
PURSUANT TO SECTIONS 8a(2)(C), (E), AND (H) OF
THE COMMODITY EXCHANGE ACT, AS AMENDED

I.

The Commodity Futures Trading Commission (“Commission”) has received information from its staff that tends to show, and the Commission's Division of Enforcement (“Division”) alleges and is prepared to prove, that:

1. Linuxor Asset Management LLC, (“LAM”) is a Delaware limited liability company whose registered address with the Commission is at 20 Exchange Place, 45th Floor, New York, NY 10005.
2. Since December 2001 LAM has been registered with the Commission as a Commodity Pool Operator (“CPO”) pursuant to Commission Regulation 4.7, 17 C.F.R. § 4.7 (2009). LAM was the CPO of Linuxor Global Macro Fund, L.P., a commodity pool (hereinafter “the pool”).
3. Abbas A. Shah (“Shah”) is a resident of New York and since 2001 has been registered as an Associated Person (“AP”) of LAM and listed as its principal. Shah is the owner of LAM.
4. Linuxor Capital Management LLC (“LCM”) is a Delaware limited liability company whose registered address with the Commission is 20 Exchange Place, 45th Floor, New York, NY

10005. LCM has been registered as a Commodity Trading Advisor (“CTA”) since March 2003.

Shah owns more than 10% of LCM and is listed as the principal of LCM.

5. On September 19, 2005, the Commission filed a four count complaint in federal district court against LAM and Shah (“Defendants”). *CFTC v. Abbas A. Shah and Linuxor Asset Management LLC.*, Case No. 05-CV-8091 (LAK) (S.D.N.Y.) (hereinafter “*CFTC v. Shah*”)

6. The Complaint alleged that Defendants violated Sections 4b(a)(2)(i)-(iii) and 4o(1) of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 6b(a)(2)(i)-(iii) and 6o(1) (2006), by making material misrepresentations in two emails to a pool participant about the value of the pool, and also violated Commission Regulations 4.20(b)-(c) and 4.7(b)(2)-(3), 17 C.F.R. §§ 4.20(b)-(c) and 4.7(b)(2)-(3), by failing to send pool participants required quarterly financial reports and an annual report.

7. On February 25, 2008, the United States District Court for the Southern District of New York issued an order granting the Commission summary judgment on Counts III and IV of the Complaint. The district court held that there were no genuine issues of material fact with regard to Defendants’ violations of Commission Regulations 4.7(b)(2)-(3) and 4.20(b)-(c), 17 C.F.R. §§ 4.7(b)(2)-(3) and 4.20(b)-(c). The district court found that Defendants did not distribute the required quarterly reports, that they were late distributing the 2002 annual report and that Defendants had received pool participant funds in an account for LCM, and thus had commingled pool funds with non-pooled property.

8. On December 17, 2008, the district court entered a consent order in *CFTC v. Shah*. The Consent Order of Permanent Injunction and Other Equitable Relief Against Abbas A. Shah and Linuxor Asset Management LLC (herein after the “Consent Order”) found that Defendants did not distribute the required quarterly reports, that they were late in distributing the 2002 annual

report, and that they had received pool participant funds in an account for LCM in violation of Commission Regulations 4.7(b)(2) –(3) and 4.20(b)-(c), 17 C.F.R. §§4.7(b)(2)-(3) and 4.20(b)-(c).

9. The Consent Order also stipulated that Shah and LAM engaged in fraud by knowingly sending two separate emails to a LAM pool participant that (1) falsely represented that the Linuxor pool had recovered more than half of its capital losses at a time when Shah knew that the pool had suffered additional losses, and (2) knowingly misrepresented the net asset value of the pool by more than \$3 million and never corrected this false statement in writing - all in violation of Sections 4b(a)(2)(i)-(iii) and 4o(1) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii) and 6o(1).

10. As a result of these actions, the Consent Order, in relevant part:

a. Permanently restrains, enjoins and prohibits Defendants from directly or indirectly, cheating or defrauding or attempting to cheat or defraud other persons in connection with any commodity futures contract sale or purchase, for or on behalf of any other person, willfully making or causing to be made to such other persons any false report or statement thereof, or willfully entering or causing to be entered for such person any false record thereof; and willfully deceiving or attempting to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person in violation of Sections 4b(a)(2)(i)-(iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i)-(iii);

b. Permanently restrains, enjoins and prohibits Defendants from using the mail or any means or instrumentality of interstate commerce to directly or

indirectly employ any device, scheme or artifice to defraud any client or participant or prospective client or participant, or to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant in violation of Section 40(1) of the Act, 7 U.S.C. § 60(1);

c. Permanently restrains, enjoins and prohibits Defendants from applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9), or acting as a principal, agent or any other officers or employee of any person registered, exempted from registration with the Commission, except as provided for in Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9); and

d. Orders Defendants to pay a civil monetary penalty in the amount of \$200,000, plus post-judgment interest.

11. Pursuant to Section 8a(2)(C) of the Act, 7 U.S.C. § 12a(2)(C), the Commission may revoke the registration of any person “if such person is permanently...enjoined by order...of any court of competent jurisdiction, including an order entered pursuant to an agreement of settlement to which the Commission...is a party, from...engaging in or continuing any activity where such activity involves... fraud.” Furthermore, under Section 8a(2)(E) of the Act, the Commission may revoke the registration of any person “if such person, within ten years...has been found...by agreement of settlement to which the Commission...is a party, (i) to have violated any provision of this Act...where such a violation involves...fraud...”

12. The facts set forth above constitute a valid basis for the Commission to revoke LAM'S registration as a CPO and Shah's registration as an AP of LAM.

13. Pursuant to Section 8a(2)(H) of the Act, 7 U.S.C. § 12a(2)(H), a person's registration may be revoked "if refusal, suspension, or revocation of the registration of any principal of such person would be warranted because of a statutory disqualification listed in this paragraph" and provided that the "principal" referred to in this section is a general partner of a partnership or a person who owns more than 10% of the voting shares of the corporation.

14. The facts set forth above constitute a valid basis for the Commission to revoke LCM's CTA registration because Shah is a more than 10% owner of LCM and he his statutorily disqualified from being registered as result of the Consent Order.

II.

15. Pursuant to Commission Regulation 3.60(a), 17 C.F.R. § 3.60(a), LAM, Shah and LCM are hereby notified that a public proceeding shall be conducted on the following questions:

a. Whether LAM and Shah are subject to statutory disqualification from registration under Section 8a(2)(C) and (E) of the Act, as set forth in Section I above;

b. Whether LCM is subject to statutory disqualification from registration under Section 8a(2)(H) of the Act, as set forth in Section I above; and

c. If the answer to questions "a" and "b" are affirmative, then whether the registrations of LAM as a CPO, Shah as an AP of LAM, and LCM as a CTA should be revoked.

16. Such a proceeding shall be held before an Administrative Law Judge, in accordance with Commission Regulation 3.60, 17 C.F.R. § 3.60, and all post-hearing procedures shall be conducted pursuant to Regulation 3.60(i)-(j), 17 C.F.R. § 3.60(i)-(j).

17. In accordance with the provisions of Commission Regulation 3.60(a)(3), 17 C.F.R. § 3.60(a)(3), LAM, Shah, and LCM are entitled to file a response challenging the evidentiary basis of the statutory disqualification or to show cause why, notwithstanding the accuracy of the allegations, their registrations should not be suspended, revoked, or restricted. Such response must be filed with the Hearing Clerk, Office of Hearings and Appeals, Commodity Futures Trading Commission, Three Lafayette Centre 1155 21st Street, NW, Washington, D.C. 20581, and a copy served upon W. Derek Shakabpa, Division of Enforcement, 140 Broadway, 19th Fl., New York, NY 10005, within thirty (30) days after the date of service of this Notice upon LAM, Shah, and LCM, in accordance with the provisions of Commission Regulation 3.60(b), 17 C.F.R. § 3.60(b). If LAM, Shah, and LCM fail to file a timely response to the Notice, the allegations set forth herein shall be deemed to be true and the presiding officer may issue an Order of Default in accordance with the provisions of Commission Regulation 3.60(g), 17 C.F.R. § 3.60(g).

III.

The Hearing Clerk shall serve this Notice of Intent to Revoke Registration Pursuant to Section 8a(2)(C), (E), and (H) of the Commodity Exchange Act, as amended by registered or certified mail pursuant to Commission Regulation 3.50, 17 C.F.R. § 3.50.

By the Commission.



Sauntia S. Warfield
Assistant Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 1, 2009