



UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:)
) CFTC Docket No. 15-35
))
) ORDER INSTITUTING
) PROCEEDINGS PURSUANT TO
) SECTIONS 6(c) AND 6(d) OF THE
) COMMODITY EXCHANGE ACT, AS
) AMENDED, MAKING FINDINGS
) AND IMPOSING REMEDIAL
) SANCTIONS
))

Nord Capital Advisors, LLC and
Yakov Shlyapochnik
Respondents.

I.

The Commodity Futures Trading Commission (“CFTC” or “Commission”) has reason to believe that Nord Capital Advisors, LLC (“NCA”) and Yakov Shlyapochnik (“Shlyapochnik”) have violated Sections 4o(1)(A) and (B), 6(c)(2), and 9(a)(3) of the Commodity Exchange Act, as amended (the “Act”), 7 U.S.C. §§ 6o(1)(A) and (B), 9(c)(2), and 13(a)(3) (2012) and Commission Regulations 4.41(a)(1) and (2), 17 C.F.R. § 4.41(a)(1) and (2) (2015). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Shlyapochnik and NCA engaged in the violations set forth herein, and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondents have submitted a Joint Offer of Settlement (“Joint Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings and conclusions herein, Respondents acknowledge service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, As Amended, Making Findings and Imposing Remedial Sanctions (“Order”).¹

¹ Respondents consent to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondents do not consent to the use of the Joint Offer, or the findings in this Order consented to in the Joint Offer, as the sole basis for any other proceeding brought by the Commission, other than a proceeding in bankruptcy or to enforce the terms of this Order. Nor do Respondents consent to the use of the Joint Offer or this Order, or the findings consented to in the Joint Offer or this Order, by any other party in any other proceeding.

III.

The Commission finds the following:

A. Summary

From September 2011 through August 2014 (the “Relevant Period”), NCA and Shlyapochnik failed to disclose in registration filings with the National Futures Association (“NFA”), that Nord Capital Financial Services Ltd. (“NCFS”) was acting as NCA’s principal. NCA’s failure to disclose NCFS as its principal constituted a material omission of fact necessary to make NCA’s filings with the NFA not misleading and therefore violated Sections 6(c)(2) and 9(a)(3) of the Act.

In addition, between as early as February 2013 through July 2014, NCA disseminated false or misleading marketing materials to prospective clients, which failed to disclose material changes in the algorithmic trading system NCA was using, in violation of Sections 4o(1)(A) and (B) of the Act and Commission Regulations 4.41(a)(1) and (2). Because Shlyapochnik was a controlling person of NCA and did not act in good faith or knowingly induced, directly or indirectly, NCA’s violations, Shlyapochnik is liable for those violations, pursuant to Section 13(b) of the Act.

B. Respondents

Nord Capital Advisors LLC conducted its operations during the Relevant Period from an office in Stamford, Connecticut. NCA has been registered with the CFTC as a Commodity Trading Advisor since July 14, 2011 and Commodity Pool Operator since October 5, 2012. NCA is affiliated with numerous other “Nord” entities (hereinafter “Nord Capital Group”) which according to Nord Capital Group, maintain offices around the world, including in Moscow, Cyprus, Switzerland, and other locations.

Yakov Shlyapochnik is a Russian citizen and resident of Moscow, Russia. Shlyapochnik formed NCA in 2011. Shlyapochnik has been listed with the CFTC as a principal of NCA since November 23, 2011, and registered as an Associated Person since February 25, 2013. From February 25, 2013 until February 13, 2015, he was listed with the CFTC as Branch Manager of NCA.

C. Facts

Shlyapochnik, the founder and former Chairman of Nord Capital Group, formed NCA in or around July 2011 for the purpose of soliciting U.S. residents to invest in managed accounts and pooled investments that would trade on-exchange U.S. futures contracts pursuant to a proprietary algorithmic trading system.

When NCA registered with the Commission as a CTA in July 2011, NCA listed NCFS as a principal. On September 16, 2011, NCA amended its registration to delete NCFS as its principal, even though NCFS continued to supply NCA with the majority of its operating capital,

as NCFS had done since NCA's formation as a CTA. After September 16, 2011, and despite subsequently amending its registration to delete and add other principals, NCA never again listed NCFS as a principal. Nor did NCA list NCFS as a principal in any of its annual registration updates filed with the NFA after September 16, 2011.

In addition, beginning at least as early as February 2013 and continuing through July 2014, NCA promoted an algorithmic trading system to potential investors across the United States called Global Diversified Futures ("GDF"). The code that comprised the GDF trading program was originally created by an independent trading system developer, referred to herein as Person A, whom Shlyapochnik hired, in or around 2010, to manage the funds of Nord Capital Group companies, including NCFS, using Person A's GDF trading program.

In or around July 2011, Shlyapochnik made Person A NCA's "Trading Director," and NCA listed Person A as one of NCA's Principals and registered him as its Associated Person. As Trading Director, Person A continued to use the GDF trading program to manage the funds of NCA's only client—and as noted above, NCA's undisclosed principal—NCFS. NCA served as CTA for NCFS trading accounts held by two futures brokers, one of which was registered as a Futures Commission Merchant ("FCM") with the CFTC, and the other of which was a U.K.-based affiliate of a CFTC-registered FCM. The purpose of having NCA trade NCFS funds was to develop a track record of performance that NCA could use to solicit customers in the United States.

In November 2012, Person A ended his employment with NCA and withdrew his Nord-related registrations, but he retained his exclusive rights to use the code underlying the GDF trading program that he had developed. From that time on, NCA no longer had access to Person A's code and utilized a different trading program.

Nevertheless, from at least February 2013 until July 2014, NCA continued to promote "the GDF system" to potential clients using a track record of "Performance Figures" that included profits and losses from February 2011 through November 2012, as if the performance after November 2012 continued to utilize Person A's code, when in fact it did not. In addition, NCA made similar false or misleading statements in "Disclosure Documents" distributed to potential clients across the United States, at in-person meetings and by email, after Person A's departure, which stated that NCA "has been using the Trading Program to manage accounts holding proprietary capital since October 2011" and directed clients to the "Performance Figures" document, which was attached as an Appendix. NCA did not disclose in its promotional materials that the trading program developed by Person A and used by NCA in 2011 and most of 2012 was not the same trading program that NCA used after Person A's departure in November 2012.

The change in the trading program in November 2012 was a material fact to prospective clients. According to "Performance Figures" distributed to potential clients, NCA's track record showed returns of 93.16% in 2011, 24.53% in 2012, and losses of over 24% in 2013. The positive performance figures for 2011 and 2012 reflected the performance of Person A's trading program, but beginning in November 2012, NCA was no longer using the that program. NCA's promotional materials explained poor performance in 2013 in the context of other factors,

without also disclosing that after Person A's departure from NCA, it was using a different trading program. In addition, NCA's use of the track record prior to December 2012 suggested that the offered trading program had been used in 2011 and part of 2012 to generate substantial profits, when in fact, it had not. Shlyapochnik knew about the content of these promotional materials and approved of their use by NCA.

D. Legal Discussion

1. NCA Knowingly Omitted In Registration Filings That NCFS Was A Principal of NCA, in Violation of Sections 6(c) and 9(a)(3) of the Act

Section 9(a)(3) of the Act makes it unlawful for:

Any person knowingly to make, or cause to be made, any statement in any application, report, or document required to be filed under this Act or any rule or regulation thereunder ... which statement was false or misleading with respect to any material fact, or knowingly to omit any material fact required to be stated therein or necessary to make the statements therein not misleading.

7 U.S.C. § 13(a)(3) (2012). Section 6(c)(2) of the Act similarly provides that:

[i]t shall be unlawful for any person to make any false or misleading statement of a material fact to the Commission, including in any registration application or report filed with the Commission under this Act ... or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.

7 U.S.C. § 9(c)(2) (2012).

Commission Regulation 3.1(a)(3), subject to certain exceptions not relevant here, defines a "principal" of an entity to include "[a]ny person that has contributed ten percent or more of capital of the entity." CTAs are required to disclose information concerning entity principals on their registration applications. *See, e.g.*, Commission Regulation 3.31(a)(3) (requiring that a firm shall, among other things, update its registration to list all entity principals not previously disclosed on the firm's registration application). In addition, Commission Regulation 3.10(d) requires that a CTA shall on an annual basis, review and update registration information maintained with NFA on behalf of the Commission.

NCA received most, if not all, of its capital from Nord entities, primarily from NCFS. NCFS's capital contributions to NCA were far in excess of the minimum 10% required for NCFS to be included as a "principal" of NCA, as defined by Commission Regulations. NCFS has therefore always been a principal of NCA during the Relevant Period. Consequently, NCA should not have removed NCFS as a principal in September 2011, and NCA was under a continuing obligation to update its registration filings to list NCFS as a principal. Moreover, all

of NCA's filings after September 2011, in which NCA listed principals other than NCFS, were materially misleading and omitted material information, in that they disclosed other entity principals of NCA but did not disclose NCFS's ongoing principal relationship with NCA. Consequently, by delisting NCFS as a principal of NCA, by failing to update its registration to disclose NCFS as a principal, and by failing to disclose NCFS as a principal in annual registration updates filed with NFA, during the Relevant Period, NCA and Shlyapochnik (who controlled NCA) violated Sections 9(a)(3) and 6(c)(2) of the Act.

2. NCA Made Fraudulent Misrepresentations in Soliciting Potential Clients in Violation of CEA Sections 4o(1)(A) and (B) and Regulations 4.41(a)(1) and (2)

Sections 4o(1)(A) and (B) of the Act make it unlawful for a CTA, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to "employ any device, scheme, or artifice to defraud" any prospective client, or to engage in any "practice" or "course of business" which "operates as a fraud or deceit" upon any prospective client. Relatedly, Regulations 4.41(a)(1) and (2) prohibit a CTA from advertising in a fraudulent or misleading manner.

Among other things, Sections 4o(1)(A) and (B) of the Act prohibit CTAs from making material misrepresentations and omissions to their clients regarding past trading track records and performance results. *See, e.g., In re James R. Burgess and Optioneer, Inc.*, Comm. Fut. L. Rep. (CCH) ¶ 30,188 (CFTC Jan. 31, 2006) (CTA who made false representations to clients and prospective clients that the offered trading system had a past performance record that it did not in fact have committed fraud in violation of Sections 4o(1)(A) and (B) of the Act); *see also In re Index Servs. Inc.*, Comm. Fut. L. Rep. (CCH) ¶ 23,425 (CFTC Dec. 29, 1986) (CTA who made misrepresentations to prospective clients including, among other things, that the CTA traded client accounts according to a computer system which, at the time of the solicitations, had been discontinued committed fraud in violation of Section 4o(1), and other Sections of the Act).

While violations of Section 4o(1)(A) and Regulation 4.41(a)(1) require proof of scienter, which includes knowing or reckless conduct, violations of Section 4o(1)(B) and Regulation 4.41(a)(2) do not. *See In re Slusser*, Comm. Fut. L. Rep. (CCH) ¶ 27,701 (CFTC July 19, 1999), *aff'd in relevant part, Slusser v. CFTC*, 210 F.3d 783 (7th Cir. 2000); *CFTC v. Equity Fin. Grp.*, 537 F. Supp. 2d 677, 699 (D.N.J. 2008); *Commodity Trend Serv. v. CFTC*, 233 F.3d 981, 993 (7th Cir. 2000).

NCA, by and through its employees and agents including Shlyapochnik, violated Sections 4o(1)(A) and (B) of the Act and Commission Regulations 4.41(a)(1) and (2) by knowingly or recklessly making false representations and failing to disclose material facts concerning NCA's offered trading system. As explained above, beginning in December 2012 through July 2014, NCA was using a different trading program than it used prior to in or around November 2012. Notwithstanding this fact, as early as February 2013 through July 2014, NCA repeatedly disseminated advertising materials, by email and other means of interstate commerce, which falsely and misleadingly presented NCA's track record as if NCA had used the same trading program continuously since 2011.

Prospective clients of NCA could have viewed the fact that NCA ceased using Person A's GDF trading system as material, among other reasons, because the trading program NCA used after Person A left did not in fact have the lengthy track record, and periods of profitability, that were presented. A statement is material if it is substantially likely that a reasonable investor would consider the matter important in making an investment decision. *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); *Sudol v. Shearson Loeb Rhoades, Inc.*, Comm. Fut. L. Rep. (CCH) ¶ 22,748 (CFTC Sept. 30, 1985). Generally, omissions and misrepresentations of fact concerning the likelihood of profiting from commodity futures transactions are material and violate the antifraud provisions of the Act. See *In re Systems of Success*, Comm. Fut. L. Rep. (CCH) ¶ 29,103 (CFTC July 11, 2002).

3. Pursuant to Section 13(b), Shlyapochnik is Liable for NCA's Violations of the CEA

Shlyapochnik controlled NCA and knowingly induced, directly or indirectly, NCA's violations of the Act and Regulations; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Shlyapochnik is liable for NCA's violations of Sections 40(1)(A) and (B), 6(c)(2), and 9(a)(3) of the Act, 7 U.S.C. §§ 60(1)(A) and (B), 9(c)(2), and 13(a)(3) (2012), and Commission Regulations 4.41(a)(1) and (2), 17 C.F.R. § 4.41(a)(1) and (2) (2015).

Controlling person liability attaches if a person exercises general control over the entity held principally liable, and possesses the ability to control the activities upon which the primary liability is predicated, even if that ability was not exercised. See *Monieson v. CFTC*, 996 F.2d 852, 859 (7th Cir. 1993). All that is required to constitute "knowing inducement" under Section 13(b) of the Act is that the controlling person "had actual or constructive knowledge of the core activities that constitute the violation at issue and allowed them to continue." *In re Spiegel*, Comm. Fut. L. Rep. (CCH) ¶ 24,103 at 34,767 (CFTC Jan. 12, 1988).

Shlyapochnik exercised general control over NCA and specific control over NCA's violative conduct described above. Shlyapochnik also had "actual or constructive knowledge" of NCA's violations. Shlyapochnik was a principal of NCA and was in regular contact with NCA's CEO and Person A when all of the above described conduct occurred. Shlyapochnik knew that NCA and its employees or agents removed NCFS from NCA's list of declared principals, as described in Section III.C, *supra*, and as noted above, personally approved the use of the false and misleading advertising materials described in Section III.C, *supra*.

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that NCA and Shlyapochnik, pursuant to Section 13(b) of the Act, violated Sections 40(1)(A) and (B), 6(c)(2), and 9(a)(3) of the Act, 7 U.S.C. §§ 60(1)(A) and (B), 9(c)(2), and 13(a)(3) (2012), and Commission Regulations 4.41(a)(1) and (2), 17 C.F.R. § 4.41(a)(1) and (2) (2015).

V.

JOINT OFFER OF SETTLEMENT

Respondents have submitted the Joint Offer of Settlement in which they, without admitting or denying the findings and conclusions herein:

- A. Acknowledge receipt of service of this Order;
- B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waive:
 1. the filing and service of a complaint and notice of hearing;
 2. a hearing;
 3. all post-hearing procedures;
 4. judicial review by any court;
 5. any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Joint Offer;
 6. any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2015), relating to, or arising from, this proceeding;
 7. any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and
 8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;

- D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Joint Offer;
- E. Consent, solely on the basis of the Joint Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that, during the Relevant Period, Respondents violated Sections 40(1)(A) and (B), 6(c)(2), and 9(a)(3) of the Act, 7 U.S.C. §§ 60(1)(A) and (B), 9(c)(2), and 13(a)(3) (2012), and Commission Regulations 4.41(a)(1) and (2), 17 C.F.R. § 4.41(a)(1) and (2) (2015);
 2. Orders Respondents to cease and desist from violating Sections 40(1)(A) and (B), 6(c)(2), and 9(a)(3) of the Act, 7 U.S.C. §§ 60(1)(A) and (B), 9(c)(2), and 13(a)(3) (2012), and Commission Regulations 4.41(a)(1) and (2), 17 C.F.R. § 4.41(a)(1) and (2) (2015);
 3. Orders Respondents to pay, jointly and severally, a civil monetary penalty in the amount of two hundred and eighty thousand dollars (\$280,000), plus post-judgment interest if the civil monetary penalty is not paid within ten (10) days of the entry of this Order; and
 4. Orders that Respondents be permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40)), and that all registered entities shall refuse Respondents trading privileges; and
 5. Orders Respondents to comply with the conditions and undertakings consented to in the Joint Offer and as set forth in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Joint Offer.

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondents shall cease and desist from violating Sections 40(1)(A) and (B), 6(c)(2), and 9(a)(3) of the Act, 7 U.S.C. §§ 60(1)(A) and (B), 9(c)(2), and 13(a)(3) (2012), and Commission Regulations 4.41(a)(1) and (2), 17 C.F.R. § 4.41(a)(1) and (2) (2015);
- B. Respondents shall pay, jointly and severally, a civil monetary penalty of two hundred and eighty thousand dollars (\$280,000), plus post-judgment interest if the civil monetary penalty is not paid within ten (10) days of the date of entry of this Order (the "CMP Obligation"). If the civil monetary penalty is not paid within ten (10) days of the date of the entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

Respondents shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment is to be made by electronic funds transfer, Respondents shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent(s) and the name and docket number of this proceeding. The paying Respondent(s) shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581. Respondent(s) shall also simultaneously provide electronic copies of these documents to Trial Attorneys Candice Aloisi and R. Stephen Painter Jr. by e-mail to the addresses: caloisi@cftc.gov and spainter@cftc.gov.

- C. Respondents are permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40)(2012)), and all registered entities shall refuse them trading privileges.
- D. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Joint Offer:
 - 1. Public Statements: Respondents agree that neither they nor any of their successors and assigns, agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondents' (i) testimonial obligations, or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall undertake all steps necessary to ensure that all of Respondents' agents and/or employees under Respondents' authority or control understand and comply with this agreement.

2. Commodity Interests: Respondents agree that they shall never, directly or indirectly:
- i. enter into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2014)) for Respondents’ own personal account(s) or for any account(s) in which Respondents have a direct or indirect interest;
 - ii. have any commodity interests traded on Respondents’ behalf;
 - iii. control or direct the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
 - iv. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;
 - v. apply for registration or claim exemption from registration with the Commission in any capacity, and engage in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulations 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2015); and/or
 - vi. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2015)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)) registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2015).

3. Cooperation with the Commission: Respondents shall cooperate fully and expeditiously with the Commission, including the Commission’s Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or this settlement, or any current or future Commission investigation related thereto. As part of such cooperation, Shlyapochnik agrees to:


Provide the Commission, as an Appendix to the Joint Offer, a declaration attesting that to the best of his knowledge and belief, no futures trading accounts under the name of Nord Capital Financial Services Ltd. contain funds that originated from the United States of America from any U.S. customer.

4. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of any partial payment of Respondents’ CMP Obligation shall not be deemed a waiver of Respondents’ obligation to make further payments pursuant to this Order, nor deemed a waiver of the Commission’s right to seek to compel payment of any remaining balance.

5. Change of Address/Phone: Until such time as Respondents satisfy in full their CMP Obligation as set forth in this Order, Respondents shall provide written notice to the Commission both by certified mail and by e-mail to Trial Attorneys Candice Aloisi (caloisi@cftc.gov) and R. Stephen Painter, Jr. (spainter@cftc.gov) of any change to Respondents' telephone number(s) and/or mailing address(es) within ten (10) calendar days of the change.

The provisions of this Order shall be effective as of this date.

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 24, 2015