

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**U.S. COMMODITY FUTURES  
TRADING COMMISSION,**

**Plaintiff,**

**v.**

**BLUE SKY CAPITAL MANAGEMENT  
CORP. and GREGORY M. SCHNEIDER,**

**Defendants.**

**Civil Action No:**

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF  
AND PENALTIES UNDER THE COMMODITY EXCHANGE ACT**

The U.S. Commodity Futures Trading Commission (“CFTC” or “Commission”), by and through its attorneys, hereby alleges as follows:

**I. SUMMARY**

1. Blue Sky Capital Management Corp. (“Blue Sky”) and its principal, Gregory M. Schneider (“Schneider”) (collectively, “Defendants”), willfully concealed material facts from and/or made false, fictitious, or fraudulent statements or representations to the National Futures Association (“NFA”) in connection with an NFA audit of Blue Sky conducted on or about October 21-23, 2008 (“NFA audit”) pursuant to the NFA’s official duties under the Commodity Exchange Act (“Act”), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 1 *et seq.*

2. In connection with the NFA audit, NFA staff asked Defendants questions about Blue Sky’s business. In response, Defendants, in addition to making other misrepresentations

and omissions of material facts, falsely represented that Blue Sky had only managed ten customer accounts, that Blue Sky had managed customer accounts only since March 2008, and that Blue Sky had received no customer complaints; completely failed to disclose that Blue Sky had managed approximately eighty other customer accounts in 2007; and completely failed to disclose that a customer had complained to Defendants repeatedly about his Blue Sky account prior to, and even during, the NFA audit.

3. In approximately January 2009, a Blue Sky customer contacted the NFA about an unresolved complaint he had made to Defendants concerning their handling of the Blue Sky account he opened in June 2007. The NFA determined his account was not among the ten accounts Defendants had disclosed in connection with the NFA audit. Upon further investigation, the NFA discovered the existence of approximately eighty accounts Blue Sky had managed in 2007 and the customer's previous complaint to Defendants.

4. Confronted by the NFA on or about January 30, 2009, Defendants made additional false, fictitious, or fraudulent statements to the NFA regarding their failure to disclose the 2007 accounts and the customer complaint.

5. By virtue of this conduct and the conduct further described herein, Defendants have engaged, are engaging, or are about to engage in conduct in violation of Section 9(a)(4) of the Act, to be codified at 7 U.S.C. § 13(a)(4). Additionally, Blue Sky is liable for the acts constituting Schneider's violations of the Act as his principal pursuant to Section 2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011), and Schneider is liable for Blue Sky's violations of the Act as a controlling person of Blue Sky pursuant to Section 13(b) of the Act, to be codified at 7 U.S.C. § 13c(b).

6. Unless restrained and enjoined by this Court, Defendants are likely to continue engaging in the acts and practices alleged in this complaint or in similar acts and practices.

7. Accordingly, the CFTC brings this action pursuant to Section 6c of the Act, to be codified at 7 U.S.C. § 13a-1, to enjoin Defendants' unlawful acts and practices and to compel their compliance with the Act. In addition, the CFTC seeks civil monetary penalties and such other equitable relief as this Court may deem necessary or appropriate.

## **II. JURISDICTION AND VENUE**

8. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, to be codified at 7 U.S.C. § 13a-1(a), which authorizes the Commission to seek injunctive relief in a district court of the United States against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice that constitutes a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder.

9. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, to be codified at 7 U.S.C. § 13a-1(e), because Schneider resides in this District, Defendants transacted business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District.

## **III. THE PARTIES**

### **A. Plaintiff**

10. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, as amended by the CRA and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified

at 7 U.S.C. §§ 1 *et seq.*, and the Commission Regulations promulgated thereunder (“Regulations”), 17 C.F.R. §§ 1.1 *et seq.* (2011).

## **B. Defendants**

11. Defendant **Blue Sky Capital Management Corp.** was incorporated in Delaware in February 2007 and maintained a business address in Lebanon, Tennessee. Blue Sky was registered with the Commission as a commodity trading advisor (“CTA”) from approximately March 27, 2007 to November 17, 2009 and as a commodity pool operator (“CPO”) from approximately November 1, 2007 to November 17, 2009. On or about August 25, 2009, the NFA issued a complaint against Blue Sky and Schneider (“NFA Complaint”) charging them with: violating NFA rules by willfully submitting materially false or misleading information to the NFA; cheating, defrauding, or deceiving another person or attempting to do so; and distributing a disclosure document without first submitting it to the NFA as required. On or about November 17, 2009, pursuant to an NFA Business Conduct Committee order (“NFA Order”) accepting Defendants’ offer of settlement of the allegations made by the NFA Complaint, the NFA permanently barred Blue Sky from NFA membership and principal status with any NFA member.

12. Defendant **Gregory M. Schneider** is 38 years old and resides in Mount Juliet, Tennessee. He was the sole principal and a registered associated person (“AP”) of Blue Sky from approximately March 27, 2007 to November 17, 2009. On or about November 17, 2009, the NFA permanently barred Schneider from NFA membership, NFA associate membership, and principal status with any NFA member pursuant to the NFA Order.

## **C. Other Relevant Entity**

13. The **National Futures Association** is registered with the Commission as a futures association pursuant to Section 17 of the Act, to be codified at 7 U.S.C. § 21. It serves as an

industry self-regulatory organization, and its membership is composed of futures commission merchants (“FCMs”), forex dealer members (“FDMs”), CTAs, CPOs, introducing brokers, and other futures professionals registered with the Commission. Under Commission oversight, the NFA is responsible for certain aspects of the regulation of these entities and their APs. *See* Regulation 3.75, 17 C.F.R. § 3.75 (2011). The NFA focuses primarily on the qualifications and proficiency, financial condition, retail sales practices, and business conduct of its members.

#### **IV. STATUTORY BACKGROUND**

14. Section 9(a)(4) of the Act, to be codified at 7 U.S.C. § 13(a)(4), makes it unlawful for any person “willfully to falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, or futures association designated or registered under [the] Act acting in furtherance of its official duties under [the] Act.”

#### **V. FACTS**

15. On or about March 27, 2007, Blue Sky registered with the Commission as a CTA, and Schneider registered with the Commission as Blue Sky’s sole AP. In approximately March 2007, Blue Sky began managing customer accounts at Global Futures & Forex, Ltd. (“GFT”), an FCM and FDM, ultimately managing approximately eighty accounts at GFT in 2007 (“2007 accounts”). The 2007 accounts traded exclusively in off-exchange foreign currency (“forex”) contracts, received net customer deposits of at least \$1.2 million, and suffered net losses of approximately 30% of invested equity by August 2007, according to later NFA testing.

16. On or about August 28, 2007, Defendants notified Blue Sky customers by email that Blue Sky planned to change its business model from a managed trading program to a pooled fund, that Defendants would no longer trade the customer accounts at GFT, and that customers

would have to complete new management agreements if they wanted Blue Sky to continue trading for them. On or about November 1, 2007, Blue Sky registered with the Commission as a CPO.

17. The owner of one of the 2007 accounts (“complaining customer”) received the August 28, 2007 email from Defendants and asked for additional information about the pooled fund, but he did not complete the new management agreement. Nonetheless, Blue Sky traded his account at GFT without his knowledge or consent in approximately October 2007, resulting in a loss of approximately \$7,000 in his account.

18. The complaining customer emailed Schneider on or about December 1, 2007 demanding to know why his account had been traded after the August 28, 2007 email, since he had not completed the new management agreement. In at least one of his reply emails to the complaining customer, Schneider promised to “fix the mistake.” However, Defendants failed to resolve the complaining customer’s concerns to the complaining customer’s satisfaction, and the complaining customer and Schneider continued to exchange emails about the complaining customer’s concerns for more than a year.

19. In approximately March 2008, Defendants once again began operating Blue Sky as a CTA and began managing new customer accounts at FX Solutions, LLC (“FX Solutions”), an FCM and FDM (“2008 accounts”). By approximately October 2008, Blue Sky was managing approximately ten accounts at FX Solutions with aggregate customer deposits of approximately \$20,000. Blue Sky traded the 2008 accounts exclusively in off-exchange forex contracts.

20. On or about October 21-23, 2008, the NFA conducted a routine audit of Blue Sky at its business address in Lebanon, Tennessee. In connection with the NFA audit, the NFA reviewed documents and interviewed Schneider. At the time, Blue Sky was registered with the

Commission as both a CTA and CPO, although it was only doing business as a CTA, and Schneider was registered with the Commission as Blue Sky's sole AP.

21. In connection with the NFA audit, NFA audit staff asked Defendants how many customer accounts Blue Sky managed and when it began managing customer accounts. In response, Defendants falsely represented to NFA audit staff that Blue Sky managed the ten 2008 accounts and had managed customer accounts beginning in March 2008. Defendants further falsely represented that all of the accounts Blue Sky managed traded exclusively in off-exchange forex contracts at FX Solutions and had an aggregate equity of approximately \$20,000. Defendants provided the NFA with FX Solutions documentation regarding the 2008 accounts but no documentation regarding the 2007 accounts managed by Blue Sky.

22. In connection with the NFA audit, NFA audit staff reviewed a Blue Sky disclosure document that stated Blue Sky "has been trading client funds since March 2007." Because this statement contradicted the information Schneider had provided them, NFA audit staff brought it to Schneider's attention during the NFA audit. In response, Schneider falsely claimed the date was merely a typo and that Blue Sky's trading of customer accounts actually began in March 2008.

23. In connection with the NFA audit, NFA audit staff asked Defendants if Blue Sky had received any customer complaints, and Defendants falsely represented to NFA audit staff that Blue Sky had not received any customer complaints. Defendants provided the NFA with no documentation regarding any complaints received from Blue Sky customers.

24. On or about October 22, 2008, the second day of the NFA audit, the complaining customer emailed Schneider about his unresolved complaint, and Schneider sent him a reply

email. Schneider still did not disclose the complaint to the NFA, nor did he provide NFA audit staff with a copy of his email correspondence with the complaining customer.

25. On or about October 23, 2008, the final day of the NFA audit, Defendants submitted a written representation letter to the NFA on Blue Sky letterhead. In that letter, Defendants falsely represented to the NFA that “[w]e have made available to you all...[c]lients’ financial records, carrying broker statements, related account documentation...[and c]ustomer complaints,” “[w]e have responded fully to all inquiries made to us by you during your audit,” and “[w]e certify that as of October 23, 2008, we rendered advisory services to 10 clients with an aggregate equity of approximately \$20,000.” Schneider signed the letter as Blue Sky’s President.

26. In approximately January 2009, the complaining customer contacted the NFA about his longstanding, yet still unresolved, Blue Sky complaint and provided the NFA with copies of his email correspondence with Schneider, including the emails exchanged on or about October 22, 2008, the second day of the NFA audit.

27. The NFA determined that the complaining customer’s account was not among the 2008 accounts that Defendants had disclosed to the NFA in connection with the NFA audit.

28. Upon further investigation, the NFA discovered the 2007 accounts and determined that Defendants had begun managing the 2007 accounts in approximately March 2007, a full year before the date Defendants had claimed Blue Sky began trading customer accounts. NFA testing showed that the 2007 accounts suffered net losses of approximately 30% of invested equity. Therefore, by failing to disclose the 2007 accounts and the customer complaint in connection with the NFA audit, Defendants concealed from the NFA large



customer losses in addition to a customer's loss resulting from Blue Sky's unauthorized trading of his account.

29. On or about January 30, 2009, NFA audit staff conducted a conference call with Schneider about its findings. Schneider falsely claimed he did not disclose the 2007 accounts in connection with the NFA audit because they were "practice" accounts, even though Blue Sky actually traded the 2007 accounts on behalf of customers, and even though the 2007 accounts suffered actual losses. Schneider further falsely claimed he did not disclose the complaining customer's complaint in connection with the NFA audit because he did not personally consider it to be a complaint, but he offered nothing in support of his conclusion.

## **VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT**

### **COUNT ONE:**

#### **Defendants Violated Section 9(a)(4) of the Act by Willfully Concealing Material Facts and/or Making False, Fictitious, or Fraudulent Statements to the NFA**

30. The allegations set forth in Paragraphs 1 through 29 are realleged and incorporated herein by reference.

31. Defendants violated Section 9(a)(4) of the Act, to be codified at 7 U.S.C. § 13(a)(4), by willfully concealing material facts and/or making false, fictitious, or fraudulent statements or representations to the NFA, a futures association registered under the Act, in connection with an audit the NFA conducted in furtherance of its official duties under the Act.

32. Specifically, in connection with the NFA audit, Defendants: willfully concealed material facts and/or made false, fictitious, or fraudulent statements of material facts by, among other things, misrepresenting to the NFA that Blue Sky only managed ten customer accounts with an aggregate equity of approximately \$20,000, that Blue Sky began trading customer accounts in March 2008, and that Blue Sky had received no customer complaints; failed to disclose to the NFA that Blue Sky managed approximately eighty customer accounts with an

aggregate equity of at least \$1.2 million in 2007; and failed to disclose to the NFA that a Blue Sky customer complained to Defendants about his Blue Sky account prior to, and even during, the NFA audit.

33. Schneider was acting as an agent of Blue Sky when engaged in the acts alleged herein. Therefore, Blue Sky, as his principal, is liable for the acts constituting Schneider's violations of Section 9(a)(4) of the Act, to be codified at 7 U.S.C. § 13(a)(4), pursuant to Section 2(a)(1)(B) of the Act, to be codified at 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

34. Schneider controlled Blue Sky and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting Blue Sky's violations alleged in this count. Schneider is therefore liable for Blue Sky's violation of Section 9(a)(4) of the Act, to be codified at 7 U.S.C. § 13(a)(4), as a controlling person pursuant to Section 13(b) of the Act, to be codified at 7 U.S.C. § 13c(b).

35. Each act of willful concealment and/or false, fictitious, or fraudulent statement made to the NFA, a futures association registered under the Act, in connection with the NFA audit conducted in furtherance of the NFA's official duties under the Act, including, but not limited to, those specifically alleged herein, is alleged as a separate and distinct violation of Section 9(a)(4) of the Act, to be codified at 7 U.S.C. § 13(a)(4).

## **VII. RELIEF REQUESTED**

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, to be codified at 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

A. Find Defendants liable for violating Section 9(a)(4) of the Act, to be codified at 7 U.S.C. § 13(a)(4);

B. Enter an order of permanent injunction enjoining Defendants and all persons insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with Defendants, including any successor thereof, who receive actual notice of such order by personal service or otherwise, from directly or indirectly:

1. engaging in conduct in violation of Section 9(a)(4) of the Act, as amended by the CRA and Dodd-Frank Act, to be codified at 7 U.S.C. § 13(a)(4);

2. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended by the CRA and Dodd-Frank Act, to be codified at 7 U.S.C. § 1a);

3. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2011)) (“commodity options”), swaps (as that term is defined in Section 1a of the Act, as amended by the CRA and Dodd-Frank Act, to be codified at 7 U.S.C. § 1a) (“swaps”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended by the CRA and Dodd-Frank Act, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) (“forex contracts”) for any personal or proprietary account or for any account in which they have a direct or indirect interest;

4. having any commodity futures, options on commodity futures, commodity options, swaps, and/or forex contracts traded on their behalf;

5. controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity

futures, options on commodity futures, commodity options, swaps, and/or forex contracts;

6. soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, swaps, and/or forex contracts;

7. 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 Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011); and

8. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2011)), agent, or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended by the CRA and Dodd-Frank Act, to be codified at 7 U.S.C. § 1a) registered, exempted from registration, or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011);

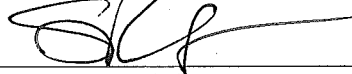
C. Enter an order requiring Defendants to pay a civil monetary penalty in the amount of not more than the greater of: (1) triple the monetary gain to Defendants for each violation of the Act; or (2) \$130,000 for each violation of the Act occurring prior to October 23, 2008 and \$140,000 for each violation of the Act occurring on or after October 23, 2008;

D. Enter an order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and

E. Enter an order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

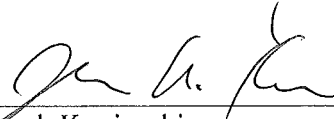
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Respectfully submitted,



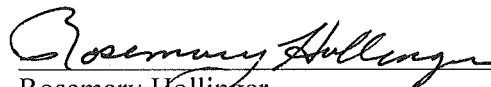
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