**NATIONAL FUTURES ASSOCIATION**

**BEFORE THE**

 **BUSINESS CONDUCT COMMITTEE**

In the Matter of: )

 )

**INSTITUTIONAL LIQUIDITY LLC** ) NFA Case No. 13-BCC-031

(NFA ID #367140); **MARK D. KRIER** )

(NFA ID #406816); **JAMES D. PIERON** )

(NFA ID #420686); and **JASON L.** )

**TANNER** (NFA ID #323680) )

 Respondents. )

**INSTITUTIONAL LIQUIDITY LLC’S ANSWER TO
NFA COMPLAINT FILED JANUARY 13, 2014**

 In response to the NFA’s January 13, 2014 Complaint, Institutional Liquidity LLC, through counsel, answers and sets forth its defenses.

**ILQ’s Request of the Committee - - Dismissal**

1. The Complaint must be dismissed with prejudice.
2. The NFA wrongfully seeks sanctions against three respondents for failure to timely cooperate in an investigation and produce documents **not in their possession, custody or control** and as to which they had no ability to produce. The NFA seeks sanctions against a fourth respondent for failure to supervise even though there was **no underlying violation** of NFA Compliance Rules, and that respondent acted in good faith and without deliberate indifference.
3. The objectives of the NFA investigation were **fully** **met**. A focus of the investigation was the pursuit of information regarding Harrison Associates and Harald McPike.[[1]](#footnote-1) (Harrison is an owner and principal of ILQ, and HMcP owns Harrison and is a principal of ILQ.) The NFA inquiry established beyond doubt that **(1)** there is **no undisclosed party** associated with HA/HMcP as principals of ILQ, **(2)** HMcP has the financial **capabilities to fund** ILQ, **(3)** there was **no suspicious activity** in connection with HMcP’s capital infusions into ILQ and **(4)** HA/HMcP **never has had any “relationships”** with Trevor Cook or the Martinez family. No one could reasonably conclude to the contrary based on any fact, suspicion or otherwise.

**Summary of Facts and Answer**

1. The NFA alleges **(1)** ILQ, Jason Tanner and Mark Krier failed to timely cooperate in an NFA investigation and **(2)** James Pieron failed to supervise to assure cooperation in the NFA investigation. The allegations are **unfounded**.
2. The defenses to the NFA claims are:
3. **First**, the NFA has known ILQ, Pieron and HA/HMcP since 2010, and has known Tanner and Krier since each became NFA employees in 2007. Pieron also is an owner and principal of ILQ.
4. **Second**, on March 18, 2013, the NFA requested financial information as to HA/HMcP and ILQ. **Third**, within 24 hours, the information as to ILQ was **produced** to the NFA. **Fourth**, while cooperating with the NFA, the respondents could not produce the information as to HA/HMcP since **none** of the four **had** **possession, custody or control** of the requested information. The respondents were **not** employees or control persons of HA/HMcP. **Only HMcP controlled the requested information.**
5. **Fifth**, the respondents were **conduits** of communications between the NFA and HMcP and his senior executive, Craig Mawdsley. Beginning on March 25, 2013 and continuing until September the NFA had **written and oral communications** with Mawdsley about the requested HMcP documents. **Sixth**, Tanner and Krier facilitated timely, good faith discussions with the NFA and Mawdsley to address the NFA’s requests of HMcP. But at no time did they have the ability to produce the HMcP information to the NFA. Tanner and Krier took **all reasonable steps** to help the NFA achieve its objective. **Seventh**, given the respondents’ **lack of** possession, custody, or control of the requested information, on May 29, 2013 an NFA Associate General Counsel, Ronald Hirst, took up **direct negotiations with Mawdsley** as to the NFA’s requests.
6. **Eighth,** an impasseoccurred in the negotiations between Mawdsley and the NFA as to what constituted “relevant” documents. Mawdsley was hesitant to recommend to HMcP that he authorize production of documents irrelevant to the NFA’s objectives that reflected HMcP’s **private** business and **personal** affairs. **Ninth**, the NFA served notices of deposition for Tanner and Krier. **Tenth**, just prior to his August 6, 2013 deposition and **for the first time**, Tanner was provided HMcP documents he believed were responsive to the NFA’s requests of HMcP. At his deposition, Tanner provided those documents to the NFA and they were entered into the deposition record as exhibits.
7. **Eleventh**, at Tanner’s deposition, the NFA requested further and detailed documentation as to HMcP. **Twelfth**, on August 26, the NFA requested further documents relating to HMcP, some of which were never previously discussed or requested. With Mawdsley serving as a conduit, ILQ satisfied those requests on August 28. **Thirteenth**, the NFA made a follow-up request to receive from the issuing commercial bank a written confirmation of the accuracy and completeness of HMcP’s documents previously received by the NFA. With HMcP’s written approval, **Mawdsley instructed UBS AG** to produce further documents to the NFA providing the confirmation it sought, and the NFA confirmed receipt thereof. (UBS AG was prohibited by local law from disclosing HMcP information without HMcP’s written approval.)
8. **As a consequence of the foregoing**, the NFA’s objectives were met, namely, **(1)** there was **no evidence of an undisclosed principal** at ILQ, **(2)** the NFA **verified HMcP’s financial capabilities** to fund ILQ and **(3)** there was **no evidence of suspicious activity** in connection with HMcP’s capital infusions into ILQ.
9. Because ILQ, Tanner and Krier **did not** have the ability to control HMcP’s delivery of financial information to the NFA, and their **consistent good faith efforts** to work with the NFA toward its objectives, there could not have been a violation of Compliance Rule 2-5. There was no failure on their part to cooperate with the NFA.
10. Because there was no underlying violation of Compliance Rule 2-5 by ILQ, Tanner or Krier, Pieron could not have violated Compliance Rule 2-36(e) by failing to supervise. Rather than having acted with deliberate indifference, Pieron carried out his supervisory responsibilities with care. His conduct was reasonable under any interpretation of his duties.

**The NFA Complaint Attempts**

**to Tarnish by Irrelevancies**

1. Allegations in paragraphs 6-10, 13 and 24 of the Complaint have **no applicability** to the alleged violations, and the NFA uses those **irrelevancies** in an effort **to tarnish** the respondents. The NFA’s allegations and alleged suspicions regarding (1) Trevor Cook, (2) the Martinez family and (3) David Smith lack credibility and are superfluous.
2. As to the NFA’s expressed suspicions regarding **Trevor Cook** and Pieron, certainly the NFA knew that:
	1. In a 2007 arm’s length transaction, Cook purchased an interest in Pieron’s company (JDFX Holding) which developed trading technologies,
	2. Cook’s conduct, independent of his purchase of an interest in JDFX, was investigated by multiple federal and state criminal and civil authorities. He was indicted by a federal grand jury and named in an S.E.C. lawsuit and a CFTC action,
	3. Cook’s assets were seized and frozen by the U.S. government stripping him of his wealth, and his assets and those of his enterprises have been the subject of a liquidation proceeding by a federal court appointed receiver,
	4. In 2010, Pieron voluntarily submitted to an interview by a multi-agency governmental task force investigating Cook. Pieron has **never** been called to testify regarding his relationship with Cook or Cook’s enterprises.
	5. Since 2010, Cook has been incarcerated and his sentence extends over the next two decades.

With knowledge of these facts, no one could reasonably conclude that Cook had or has any relationship with ILQ, Pieron, HA/HMcP or anyone else since 2010.

1. As to the NFA’s expressed suspicions regarding the **Martinez family** and ILQ, certainly the NFA knew that:
	1. While ILQ’s predecessor was purchased from the Martinez family, thereafter no member of the family had a continuing interest in ILQ,
	2. No member of the Martinez family had or has any interest in ILQ’s, Pieron’s or HA/HMcP’s financial affairs.

With knowledge of those facts, no one could reasonably conclude that the Martinez family had or has any relationship with ILQ, Pieron or HA/HMcP.

1. As to the NFA’s expressed suspicions regarding **David Smith** and ILQ, no one at ILQ has met or had any communication with Smith and no one could reasonably conclude that Smith had or has any relationship with ILQ, Pieron or HA/HMcP.

**Principals Applicable to the NFA’s**

**Charges of Compliance Rule Violations**

**No Violation of Rule 2-5 or of a**

**Duty Which Cannot Be Fulfilled**

1. The NFA has regulatory authority to command production of documents and witnesses from its members. A member must comply with NFA commands, **(1)** if the NFA Compliance Rules impose a duty on the member, **(2)** **if** **the member has the capacity to produce the compelled document or person**, and **(3)** in a timely manner.
2. A **duty** to produce a document or person is enforceable **unless** the compelled party shows it or he**/**she **cannot produce** the compelled document or person. Under the facts of this case, the NFA **(1)** knew that ILQ, Tanner and Krier **did not have possession, custody or control of HMcP’s financial statements**, **(2)** accepted Tanner and Krier acting as conduits between the NFA and HMcP’s senior executive, Mawdsley, in an effort to secure the requested documents, and **(3)** even took up direct negotiations with Mawdsley in order to reframe the scope of the NFA’s requests and ultimately to have each of the requests satisfied **by** HMcP. Given the absence of possession, custody or control of the financial information, ILQ, Tanner and Krier cannot be held legally responsible and sanctioned for a duty they **could not perform**.
3. There was no failure on their part to **timely cooperate** with the NFA. In fact, the hearing record will be replete with communications evidencing their cooperation which was timely and unfaltering.
4. The legal principal supporting the respondents’ arguments has its derivation in the Federal Rules of Civil Procedure. F.R.C.P. Rule 34(a)(1) permits a party to demand production by another party of items in the responding party’s **possession, custody or control**. The cases interpreting this F.R.C.P., as well as the interpretation of similar discovery or compliance rules like the NFA’s Compliance Rule 2-5, hold that a responding party cannot be sanctioned for failure to produce a document **if the party does not have the ability to comply**.[[2]](#footnote-2)

**No Violation of Rule 2-36(e);**

**No Failure to Supervise by Pieron**

1. The NFA’s charge of failure to supervise against Pieron is akin to a charge of breach of a duty of care. But, a supervisor cannot be found to have “failed to supervise” unless there is an **underlying violation**.So, Pieron cannot have violated Rule 2-36(e) unless there was a violation of Rule 2-5 - - which there was not. There could not have been an underlying violation of Rule 2-5 since ILQ, Tanner and Krier could not compel HMcP to produce the documents the NFA requested. Therefore, Pieron did not fail to supervise or violate Rule 2-36(e).
2. Pieron’s conduct demonstrates his care in fulfilling his supervisory responsibilities. **First**, ILQ implemented written supervisory procedures, and diligently supervised the activities of its employees. **Second**, when hiring Tanner and Krier from the NFA, ILQ hired two former NFA employees with experience and know-how in compliance. **Third**, Pieron remained informed by Tanner and Krier of the NFA’s requests at issue here. **Fourth**, Pieron knew that Tanner and Krier did not have possession, custody or control of the HMcP financial statements requested by the NFA, and knew that any decision with regard to the production of such statements was in **HMcP’s sole discretion**. **Fifth**, Pieron knew that Tanner and Krier were cooperating with the NFA and working in good faith in an effort to secure HMcP’s acquiescence with the NFA’s requests. **Sixth**, Pieron knew there was no effort by ILQ, Tanner or Krier to violate NFA Compliance Rules, and knew of no threat to the integrity of ILQ’s efforts to cooperate so that the NFA requests were fulfilled. **Seventh**, there is an absence of any fact pinpointing deliberate indifference by Pieron to the NFA’s requests for HMcP financial information. **Eighth**, there was no tacit authorization by Pieron for Tanner and/or Krier to delay in seeing that the NFA’s requests of HMcP were met. **Ninth,** Pieron was aware and comforted by the fact that the NFA was having direct communications with Mawdsley toward fulfilling the NFA’s requests. **Tenth,** Pieron learned that the NFA’s requests were met by the production of the requested HMcP financial statements. Those steps are indicia of good management and do not represent negligence, a breach of a duty of care, or a lack of diligent supervision of employee conduct. Pieron has no liability for violating Rule 2-36(e) or for failing to supervise. Pieron’s conduct was reasonable under any interpretation of his duties as a supervisor.

**Paragraph by Paragraph**

**Specific Answers to the Complaint**

1. The following paragraphs correspond by number to the numbered paragraphs in the NFA’s January 13, 2014 Complaint.

**Jurisdiction**

1. Admits the allegations in paragraph 1.
2. Admits the allegations in paragraph 2.
3. Admits the allegations in paragraph 3.
4. Admits the allegations in paragraph 4.

**Background**

1. Admits the allegations in the first four sentences in paragraph 5. Deny the allegations in the fifth sentence in paragraph 5, and further state that the words “virtually every month” calls for a subjective determination.
2. Upon information and belief, admits the allegations in paragraph 6, and further states that those allegations have no relevance to the alleged violations. ILQ further states that, at its request, in mid-2010, Pieron, HMcP and counsel for ILQ, then an FCM, met with the NFA staff in Chicago and discussed, among other things, funding, future business operations, Trevor Cook, the Martinez family, and ILQ’s forthcoming FDM application. ILQ sought the NFA’s informal endorsement to move forward. The NFA staff took the opportunity to question Pieron and HMcP about their business relationships. ILQ was approved as an FDM in April 2011.
3. ILQ is without sufficient information to admit or deny the allegations in paragraph 7, and therefore denies those allegations, and further states that those allegations have no relevance to the alleged violations.
4. Upon information and belief, admits the allegations in paragraph 8, and further states that the allegations are irrelevant to the alleged violations in the two Counts.
5. Admits the allegations in the first and second sentences in paragraph 9. Denies the allegations in the third sentence in paragraph 9 in that the term “business relationship” implies **(a)** something more than an arm’s length business relationship and **(b)** that Pieron was somehow involved with Cook’s criminal conduct. Upon information and belief, admits the allegations in the fourth sentence in paragraph 9, and further states that those allegations have no relevance to the alleged violations.
6. Admits the allegations in the first sentence in paragraph 10, except denies the use of the term “business partner,” and further states that those allegations have no relevance to the alleged violations. ILQ is without sufficient information to admit or deny the allegations in the second sentence in paragraph 10, and therefore denies those allegations, and further states that those allegations have no relevance to the alleged violations. Upon information and belief, admits the allegations in the third sentence in paragraph 10.
7. Admits the allegations in the first and second sentences in paragraph 11. Deny the allegations in the third and fourth sentences in paragraph 11.
8. Admits the allegations in the first sentence in paragraph 12. Deny the allegations in the second sentence in paragraph 12. Admits the allegations in the third sentence in paragraph 12.
9. Deny the allegations in paragraph 13.
10. Admits the allegations in the first sentence in paragraph 14. Upon information and belief, admits the allegations in the second sentence in paragraph 14, and further states that the introductory words “After NFA learned of this . . .” are misleading and leave a false impression in that the NFA knew in advance of the early 2013 capital infusion since the NFA verified the transfer of funds to ILQ referred to in the first sentence in paragraph 14.
11. Deny the allegations in paragraph 15.

**Applicable Rules**

1. The statement in paragraph 16 is not an allegation but a purported summary of NFA Compliance Rule 2-5, and no response thereto is required. ILQ states that the Rule should be read, interpreted and enforced as a whole, including any referenced and all applicable constitutions, rules, regulations, customs and usages of the futures industry and all applicable law.
2. The statement in paragraph 17 is not an allegation but a purported summary of NFA Compliance Rule 2-36(e), and no response thereto is required. ILQ states that the Rule should be read, interpreted and enforced as a whole, including any referenced and all applicable constitutions, rules, regulations, customs and usages of the futures industry and all applicable law.

**Count I**

1. ILQ reasserts the answers heretofore provided in paragraphs 1, 2 and 4-16.
2. Admits the allegations in paragraph 19.
3. ILQ is without sufficient information to admit or deny the allegations in the first and second sentences in paragraph 20 in that it does not know what the NFA was “concerned about” or “noticed,” and therefore denies the allegations in those two sentences. Admits the allegations in the third and fourth sentences in paragraph 20, and further states that at the time ILQ had total assets of $44 million and net capital in excess of $23 million. Admits the allegations in the fifth sentence in paragraph 20.
4. Admits the allegations in the first and third sentences in paragraph 21, and further states that ILQ has not violated any NFA financial requirement and maintained adjusted net capital in excess of $23 million during the period in question. Total assets were over $43.5 million. ILQ is without sufficient information to admit or deny the allegations in the second sentence in paragraph 21 in that it does not know what “concerned NFA,” and therefore denies the allegations in the second sentence.
5. Admits the allegations in paragraph 22, and further states that the term “financial partner” has been used to refer to HA or HMcP and the past and ongoing commitment to ILQ.
6. Admits the allegations in paragraph 23.
7. ILQ is without sufficient information to admit or deny the allegations in paragraph 24 in that it does not know why (“Because”) the NFA commenced its investigation as used in the first sentence, what the “NFA also wanted to determine” as used in the second sentence, and what the “NFA wanted to check” as used in the third sentence, and therefore denies the allegations in paragraph 24. ILQ further states that (a) the reference to Trevor Cook and the Martinez family in the third sentence in paragraph 24 is superfluous to the alleged violations and (b) no one could reasonably conclude based on any fact, suspicion or otherwise that HA or HMcP had any “relationships” with Trevor Cook or the Martinez family.
8. Admits the allegations in the first sentence in paragraph 25, and further states that the letter should be read, interpreted and enforced as a whole. Deny the allegations in the second sentence in paragraph 25 in that it implies bad faith on the part of ILQ and is not a full recitation of the events that took place in connection with the 2011 examination. Admit the allegations in the third sentence in paragraph 25, and further states that these were the only documents requested by the NFA as to which Krier and others at ILQ had possession, custody or control or the ability to produce to the NFA.
9. Admits the allegations in the first sentence in paragraph 26, and further states that by such allegations the NFA admits that it was in discussions and negotiations with Mawdsley, as a senior executive for HMcP, and this fact underscores that it was HMcP, and not the respondents, who had possession, custody and control of the HMcP documents for production to the NFA. ILQ is without sufficient information to admit or deny the allegations in the second sentence in paragraph 26 in that it does not know what “In reviewing the bank statements, NFA found,” and therefore denies the allegations in the second sentence.
10. Admits the allegations in paragraph 27.
11. Admits the allegations in paragraph 28.
12. Admits the allegations in paragraph 29, and further states that the NFA has omitted important facts and events prior to April 16, 2013 when an NFA staff member, Valerie O’Malley, informed Krier that she would provide to ILQ a written explanation on April 5, 2013 more clearly explaining details of the NFA’s document requests of March 18, 2013. Such written explanation “more clearly explaining details” was never provided to ILQ. ILQ further states that in the NFA’s April 16, 2013 letter, its recital of requests that had been made on March 18, 2013 was inaccurate. The NFA randomly changed its requests of HA/HMcP. ILQ further states that the referred to April 16, 2013 letter should be read, interpreted and enforced as a whole.
13. Admits the allegations in the first sentence in paragraph 30, and further states that the referred to discussions addressed much more than what is alleged and included discussions with regard to the scope of the requested documents. ILQ further states that the allegations in the first sentence constitute an admission by NFA of its negotiations with Mawdsley, as a senior executive of HMcP. Deny the allegations in the second sentence in paragraph 30, and further state (a) that ILQ and its employees were unable to comply with certain NFA requests in that they did not have possession, custody and control of the HMcP documents and (b) the NFA took up negotiations with Mawdsley with regard to the requested production of the HMcP documents. ILQ further states that, in fact, there were modifications to and changes by the NFA with respect to their April 16, 2013 requests of HMcP. Deny the allegations in the third and fourth sentences in paragraph 30 and further states that the references to the Krier letter include mischaracterizations and the letter should be read, interpreted and enforced as a whole.
14. Admits the allegations in the first sentence in paragraph 31, and further states that Krier was actively engaged in cooperation with the NFA to facilitate the production of the documents it requested. In an April 22, 2013 email to Rachel Branderburg of the NFA and three others at the NFA, Krier stated:

“. . . I do want to make it clear the (sic) we fully intend on assisting the NFA in any way possible to achieve their desired level of verification. We will do whatever we can to work with the NFA and Mr. . . . (HMcP) so that adequate verification can be achieved . . . We will be communicating and working with Mr. . . . (HMcP) and his representatives when he returns from vacation to further discuss the NFA’s requests. . . . ”

Admits the allegations in the second and third sentences in paragraph 31, and further states that, in fact, the NFA did “alter its stance” and had “further discussions” with regard to the scope of the production of Security Management bank statements.

1. Admits the allegations in paragraph 32, and further states that by reason of the production referred to in paragraph 32 ILQ had provided all documents requested by the NFA in its March 18, 2013 letter. Such production **by** HMcP was consistent with the suggestion of Hirst during a telephone conversation between Hirst and Tanner on April 25, 2013.
2. ILQ is without sufficient information to admit or deny the allegations in the first and second sentences in paragraph 33 in that it does not know what the “NFA noted” and what the “NFA also found,” and therefore denies the allegations in the first sentence. ILQ further states that the Foreign Bank’s letters included relevant financial information as to HMcP.
3. Admits the allegations in paragraph 34, and further states that thereby the NFA admits that it engaged in direct negotiations with Mawdsley with respect to the HMcP financial information.
4. Admits the allegations in paragraph 35, and further states that thereby the NFA admits that it again modified certain of its prior requests for documents and engaged in ongoing negotiations with Mawdsley. ILQ further states that during such conversations, there were discussions of whether the requested financial information would include both “incoming” and “outgoing” funds into the account. Mawdsley was willing to recommend to HMcP that he produce statements showing funds “incoming” into the account in order to address the NFA’s concerns that there might be undisclosed principals by reason of HMcP’s equity contributions into ILQ, but Mawdsley was hesitant to recommend to HMcP that he produce documents showing monies “outgoing” in such account since it was irrelevant to the NFA’s inquiry and would involve information private and personal to HMcP.
5. Admits the allegations in the first sentence in paragraph 36. Deny the allegations in the second and third sentences in paragraph 36 in that the NFA mischaracterizes Mawdsley’s June 3, 2013 email, and ILQ further states and underscores that by such allegations the NFA is acknowledging and admitting that Mawdsley, as a senior executive of HMcP, was in a position to make recommendations to HMcP regarding the release of HMcP’s financial information, and that ILQ, Tanner and Krier did not have possession, custody or control of such information nor the ability to decide whether such information should or would be produced to the NFA.
6. ILQ is without sufficient information to admit or deny the allegations in the first and second sentences in paragraph 37 in that it does not know what the “NFA decided” and what the “NFA also wanted to ask,” and therefore denies the allegations.
7. Admits the allegations in paragraph 38.
8. Admits the allegations in paragraph 39.
9. Admits the allegations in paragraph 40.
10. Admits the allegations in paragraph 41.
11. Admits the allegations in paragraph 42.
12. Admits the allegations in paragraph 43, and further states that by such testimony Tanner was acknowledging that neither ILQ, Krier, nor he had possession, custody or control of HMcP’s financial information and that all decisions with respect thereto were to be made by HMcP.
13. Deny the allegations in the first sentence in paragraph 44, and further states that it does not know what the “NFA also learned” and the allegations in that sentence are a mischaracterization of Tanner’s testimony. Deny the allegations in the second sentence in paragraph 44, and further states that the allegations are not relevant to the alleged violations. Deny the allegations in the third sentence in paragraph 44, and further states that it does not know “the misimpressions on NFA’s part” and further states that the allegations in that sentence are a mischaracterization of Tanner’s testimony.
14. Admits the allegations in the first sentence in paragraph 45. Deny the allegations in the second and third sentences in paragraph 45. ILQ is without sufficient information to admit or deny the allegations in the fourth and fifth sentences in paragraph 45 in that it does not know what the “NFA. . . noted” and what the “NFA also determined,” and therefore denies the allegations in those two sentences.
15. Admits the allegations in paragraph 46 to the extent that ILQ understands the allegations in the paragraph.
16. Admits the allegations in the first sentence in paragraph 47. ILQ is without sufficient information to admit or deny the allegations in the second sentence in paragraph 47 in that it does not know what the “NFA also noted,” and therefore denies the allegations in the second sentence in paragraph 47, and further states that the NFA’s allegations mischaracterize the completeness or duplicity of the statements provided on August 20, 2013.
17. Admits the allegations in the first and second sentences in paragraph 48, and further states that by such allegations the NFA is admitting the conduit role of Mawdsley in communicating with HMcP about decisions with respect to the financial statements of HMcP. Deny the allegations in the third sentence in paragraph 48 in that they are a mischaracterization of what Tanner said.
18. Deny the allegations in the first sentence in paragraph 49. Deny the allegations in the second sentence in paragraph 49, and further states that the Complaint mischaracterizes the nature of the inquiries made by the NFA during the referred to telephone conversation among Cynthia Cain, Mawdsley and Tanner and further states that Mawdsley offered to put the NFA staff in contact with personnel at the foreign bank, UBS AG, that would be able to answer any questions that the NFA might have regarding the nature of the account and the type of the transactions that could be conducted in an account of such type. The NFA declined the opportunity to be put in contact with UBS AG.
19. Admits the allegations in paragraph 50, and further states that the letter should be read, interpreted and enforced as a whole.
20. Admits the allegations in paragraph 51.
21. Deny the allegations in paragraph 52, and ILQ further states that the allegations are a mischaracterization of the communications, good faith efforts, and production of information between March 18, 2013 and September 2013.
22. Deny the allegations in paragraph 53, and further states that in a series of communications the NFA asked for information on a “piecemeal basis.”
23. Deny the allegations in paragraph 54.
24. Deny the allegations in paragraph 55.

**Count II**

1. ILQ reasserts the answers heretofore provided in paragraphs 1, 3, 5-15 and 17.
2. Admits the allegations in paragraph 57.
3. Admits the allegations in the first sentence in paragraph 58, and further state that Pieron’s ability to have the NFA’s requests met in a timely and proper manner were limited by ILQ’s, Tanner’s, Krier’s and his own lack of possession, custody or control over HMcP’s financial information. Deny the allegations in the second and third sentences in paragraph 58.
4. Deny the allegations in paragraph 59.

**Affirmative Defenses**

1. The NFA Complaint fails to state causes of action upon which relief can be granted.
2. The NFA Complaint fails to allege facts sufficient to establish the required elements for a finding of a violation of Compliance Rule 2-5 by ILQ, Tanner and/or Krier.
3. The NFA Complaint fails to allege facts sufficient to establish the required elements for a finding of a violation of Compliance Rule 2-36(e) by Pieron.
4. The NFA’s own actions, including those actions alleged by it in its Complaint and those to be made a matter of the record at the hearing, establish that there has not been a violation of Compliance Rule 2-5 by ILQ, Tanner or Krier or a violation of Compliance Rule 2-36(e) by Pieron.

**WHEREFORE**, ILQ respectfully requests that the NFA Business Conduct Committee deny the relief sought and dismisses the Complaint against all of the respondents with prejudice.

 Respectfully submitted,

 /s/

 John M. Fedders

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 **Counsel for Institutional Liquidity LLC**

February 18, 2014

**Certificate of Service**

 I, John M. Fedders, counsel for Institutional Liquidity LLC, hereby certify that on February 18, 2014, true and correct copies of the foregoing **Institutional Liquidity LLC’s Answer to NFA’s Complaint filed January 13, 2014,** were served upon the following via Federal Express overnight delivery service for priority delivery on February 19, 2014.

Legal Department - Docketing

National Futures Association

Suite 1800

300 South Riverside Plaza

Chicago, Illinois 60606

Cynthia Cain Ioannacci, Esq.

Legal Department

National Futures Association

Suite 1800

300 South Riverside Plaza

Chicago, Illinois 60606

and were served upon the following by personal delivery on February 19, 2014:

Mark D. Krier

c/o Institutional Liquidity LLC

Suite 120

3777 Sparks Drive, S.E.

Grand Rapids, MI 49546

Jason L. Tanner

c/o Institutional Liquidity LLC

Suite 120

3777 Sparks Drive, S.E.

Grand Rapids, MI 49546

James D. Pieron

c/o Institutional Liquidity LLC

Suite 120

3777 Sparks Drive, S.E.

Grand Rapids, MI 49546

 /s/

 John M. Fedders

1. Harrison Associates is referred to as “Harrison.” Harald McPike is referred to as “HMcP.” Collectively, they are referred to as “HA/HMcP.” [↑](#footnote-ref-1)
2. See, Klesch & Co. Ltd. v. Liberty Media Corp., 217 F.R.D. 517, 520 (D. Colo. 2003) (stating that even under the most expansive interpretation of “control,” the “practical ability” to demand production must be accompanied by a similar ability to enforce compliance with that demand); Bell v. Lakewood Eng’g & Mfg. Co., 15 F.3d 546, 522 (6th Cir. 1994) (holding that dismissal under Rule 37 for failure to comply with a discovery request would be an abuse of discretion if the party does not have ability to comply); Chaveriat v. Williams Pipe Line Co., 11 F.3d 1420, 1427 (7th Cir. 1993) (finding that party could obtain documents if it tried hard enough does not mean that document is in its “possession, custody or control” within meaning of the F.R.C.P. on production of documents); Comeau v. Rupp, 810 F.Supp. 1127, 1166 (D. Kan. 1992) “control,” within the meaning of the federal rule requiring a party to produce responsive documents that are in its possession, custody or control, comprehends not only possession but also the **right, authority**, or **ability** to obtain the documents. [↑](#footnote-ref-2)