**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. )

**JAMES PIERON’S ANSWER TO NFA COMPLAINT FILED JANUARY 13, 2014**

 In response to the NFA’s January 13, 2014 Complaint, James Pieron, through counsel, answers and sets forth his defenses.

1. **NFA Allegations - - Need for Dismissal with Prejudice**. The NFA alleges that James Pieron violated NFA Compliance Rule 2-36(e) by **failing to supervise** ILQ and its employees Jason Tanner and Mark Krier to assure their cooperation in an NFA investigation. As a predicate to the allegations against Pieron, the NFA alleges that ILQ, Tanner and Krier violated Compliance Rule 2-5 by failing to **timely cooperate** in an NFA investigation. **The allegations are without merit and the Complaint should be dismissed with prejudice.**
2. **Pieron’s Professional Reputation and Integrity are Beyond Reproach.** For four years, there have been “veiled” accusations about Pieron’s integrity and character. None of the allegations, all “obscure,” has any substance. There is no fact, or even reasonably based suspicion, that Pieron has engaged in any type of wrongdoing. It is important to understand the following: **First**, in mid-2010 Pieron and others associated with ILQ met with the NFA staff and discussed ILQ’s proposed future operations. The NFA staff then was provided an opportunity to question Pieron about his business relationships, including any that might be suspected with Trevor Cook or the Martinez family. Subsequently, ILQ was approved as an FDM in April 2011. **Second**, there have been statements implying that Pieron had a relationship with Trevor Cook which involved improper conduct. Pieron never engaged in any of Cook’s wrongdoing. While the two had a 2007 arm’s length transaction, there is not the slightest indication that Pieron knew of Cook’s criminal conduct. In fact, Pieron was not even called to testify regarding his relationship with Cook or Cook’s enterprises. Any accusation of Pieron joining in Cook’s offenses is both frivolous and without substance. **Third**, there have been “oblique” suggestions that the Martinez family continues to have an interest in ILQ. While ILQ’s predecessor was purchased from the Martinez, no member of that family has a continuing economic interest in ILQ or in Pieron’s personal affairs. **Fourth**, any suggestion that ILQ or Pieron had a relationship with David Smith is pure fantasy. No one at ILQ, including Pieron, has met or had any communication with Smith. **Fifth**, the allegations against Pieron in **this** NFA action are baseless in that there was no lack of timely cooperation by ILQ or any of its employees with the NFA’s investigation, and Pieron consistently has been a diligent supervisor of ILQ employees’ conduct - - all in compliance with NFA Rule 2-36(e). Pieron even hired two NFA employees as senior executives at ILQ in order to assure that ILQ had the required industry and “regulatory” know how. **Finally**, these types of accusations and irrelevancies have been used carelessly to tarnish Pieron’s good name and integrity, and the business activities of ILQ. It is time that the efforts to tarnish Pieron’s good name by false statements and irrelevancies come to an end.
3. **Factual Background**. In March 2013, the NFA requested of ILQ financial information as to Harrison Associates, Harald McPike[[1]](#footnote-1) and ILQ. Harrison is an owner and principal of ILQ, and HMcP owns Harrison and is a principal of ILQ. The information requested of ILQ was produced to the NFA the next day.
4. While cooperating with the NFA, ILQ, Tanner and Krier could not produce the information as to Harrison or HMcP since **none** of the three **had** **possession, custody or control** of the requested information. **Only HMcP controlled the requested information.**
5. Beginning in late March and until September, the NFA communicated with Craig Mawdsley, a senior executive of HMcP, about the requested HMcP documents. Following extended negotiations between the NFA and Mawdsley, facilitated by Tanner and Krier, in September 2013 the NFA’s requests of HA/HMcP were satisfied.
6. **As a consequence,** the NFA’s investigation objectives were **fully met**. 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.
7. 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.
8. **Pieron’s Defenses**. Pieron’s conduct demonstrates his care in fulfilling his supervisory responsibilities:
	1. ILQ implemented written supervisory procedures, and diligently supervised the activities of its employees.
	2. When hiring Tanner and Krier from the NFA, ILQ hired two former NFA employees with experience and know-how in compliance.
	3. Pieron **remained informed** by Tanner and Krier of the NFA’s requests at issue here.
	4. 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**.
	5. 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.
	6. 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.
	7. There is an **absence of any fact pinpointing deliberate indifference** by Pieron to the NFA’s requests for HMcP financial information.
	8. 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.
	9. Pieron was aware and comforted by the fact that the NFA was having direct communications with Mawdsley toward fulfilling the NFA’s requests.
	10. 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.
9. **No culpability by Pieron**. 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.

**Pararagraph-by-Paragraph**

**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. Pieron 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. 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. Pieron 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.
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 something more than an arm’s length business relationship and 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. Pieron 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. Pieron 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. Pieron 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. Pieron reasserts the answers heretofore provided in paragraphs 1, 2 and 4-16.
2. Admits the allegations in paragraph 19.
3. Pieron is without sufficient information to admit or deny the allegations in the first and second sentences in paragraph 20 in that he does not know what the NFA was “concerned about” or “noticed,” and therefore denies the allegations in those two sentences. Admits the alleged violations 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. Pieron is without sufficient information to admit or deny the allegations in the second sentence in paragraph 21 in that he 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 Harrison or HMcP and the past and ongoing commitment to ILQ.
6. Admits the allegations in paragraph 23.
7. Pieron is without sufficient information to admit or deny the allegations in paragraph 24 in that he 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. Pieron 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 Harrison 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 Pieron, Tanner or Krier, who had possession, custody and control of the HMcP documents for production to the NFA. Pieron is without sufficient information to admit or deny the allegations in the second sentence in paragraph 26 in that he does not know what “In reviewing the bank statements, NFA found,” and therefore denies the allegations in the second sentence.
10. Upon information and belief, 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 state that the referred to Krier 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. Pieron is without sufficient information to admit or deny the allegations in the first and second sentences in paragraph 33 in that he does not know what the “NFA noted” and what the “NFA also found,” and therefore denies the allegations in the first sentence. Pieronfurther states that the Foreign Bank’s letters included relevant financial information as to HMcP.
3. Upon information and belief, 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. Upon information and belief, 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. Upon information and belief, Pieron 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 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 Pieron 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. Pieron is without sufficient information to admit or deny the allegations in the first and second sentences in paragraph 37 in that he 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 he 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 he does not know “the misimpressions on the 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. Pieron is without sufficient information to admit or deny the allegations in the fourth and fifth sentences in paragraph 45 in that he 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 Pieron understands the allegations in the paragraph.
16. Admits the allegations in the first sentence in paragraph 47. Pieron is without sufficient information to admit or deny the allegations in the second sentence in paragraph 47 in that he 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. Upon information and belief, 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 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 question 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 Pieron 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 upon information and belief, 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. Pieron 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**, Pieron respectfully requests that the NFA Business Conduct Committee deny the relief sought and dismisses the Complaint against Pieron with prejudice.

 Respectfully submitted,

 /s/

 John M. Fedders

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 **Counsel for James Pieron**

February 18, 2014

**Certificate of Service**

 I, John M. Fedders, counsel for James Pieron, hereby certify that on February 18, 2014, true and correct copies of the foregoing **James Pieron’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

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Chicago, Illinois 60606

Cynthia Cain Ioannacci, Esq.

Legal Department

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

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 /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)