
NORTH AMERICAN DERIVATIVES EXCHANGE, INC.
NOTICE OF DISCIPLINARY ACTION

FILE NO.: TPI_2021_007

MEMBER: Cary Kahn

NADEX RULES:

NADEX MEMBERSHIP AGREEMENT

Member Acknowledgements and Authorizations, Section (h):

You acknowledge and agree that You will, following a request by Nadex, promptly provide to Nadex financial or other information as Nadex may reasonably request or as may be required for Nadex to respond to a request for information from the Commodity Futures Trading Commission (“CFTC”) or other regulatory or judicial bodies.

RULE 3.1 TRADING MEMBERS – APPLICATIONS, CLASSIFICATIONS, AND PRIVILEGES

- (f) A Trading Member that is an individual, may not maintain and/or trade more than one Nadex account. No Authorized Trader(s), nor any officer, director, member, manager, owner, or indirect owner, of a Trading Member that is an entity may maintain a separate Nadex account and/or trade any Nadex account other than that entity’s account.

RULE 3.3 MEMBER OBLIGATIONS

- (a) Each Member and any Authorized Trader(s) thereof, must comply with these Rules, applicable provisions of the Commodity Exchange Act, and relevant Commission regulations. Each Member and any Authorized Trader(s) thereof must also cooperate promptly and fully with Nadex, its agents, and/or the Commission in any investigation, call for information, inquiry, audit, examination, or proceeding. Such cooperation shall include providing Nadex with access to information on the activities of such Member and/or Authorized Trader in any referenced market that provides the underlying prices for any Nadex market. . . .
- (d) Each Member must immediately notify Nadex in writing upon becoming aware:
- (i) that the Member, any of the Member’s officers or any of the Member’s Authorized Traders has had access or trading privileges suspended, or membership denied, in any commodity, securities, or swaps exchange, brokerage, association, or Regulatory Agency;

- (ii) that the Member, any of the Member's officers or any of the Member's Authorized Traders has been convicted of, pled guilty or no contest to, or entered a plea agreement to, any felony in any domestic, foreign or military court;
- (iv) that the Member, any of the Member's officers or any of the Member's Authorized Traders is currently a party to any investigation or proceeding, the resolution of which could result in an event described in Rule 3.3(d)(i)-(iv)

RULE 5.19 PROHIBITED TRANSACTIONS AND ACTIVITIES

- (k) No Person shall intentionally provide misleading, erroneous, or fraudulent information to Nadex on a membership application or otherwise.

FINDINGS: On March 16, 2020, the Compliance Department sent Cary Kahn ("Kahn") a request for information after receiving notification regarding his regulatory and criminal background. Specifically, the Compliance Department was notified that the Securities and Exchange Commission ("SEC") issued a complaint in Federal District Court against Kahn for violative conduct. The complaint alleged that between September 3, 2002 and January 22, 2009, Kahn defrauded investors and obtained money and property by means of materially false and misleading statements in connection with the purchase and sale of securities and in connection with the sale of "flex options" or "option conversions." The complaint also alleged that, as part of the scheme, Kahn represented himself as an experienced and successful securities trader in order to obtain approximately \$2,121,098.70 from investors. The complaint further alleged that Kahn misrepresented to the investors in his Double Eagle Fund that he would use their money to buy and sell securities and that they could expect profits of fourteen to eighteen percent per year. In addition, the complaint alleged that Kahn sold some investors "flex options" and "option conversions," with guaranteed returns of between fifteen and nineteen percent within either six months or one year. The complaint also alleged that Kahn failed to use most of the investor money to trade securities, converted most of the money to his own use and benefit, used a portion of the money to make payments to other investors, and sent investors account statements misrepresenting profits earned as a result of his trading. Upon further review of public records, Nadex discovered that Kahn was sentenced to five years in federal prison for mail fraud in connection with the aforementioned Ponzi scheme he operated. Additionally, Kahn was ordered to cease and desist from further violations of the relevant Securities Acts and SEC Regulations, as well as pay disgorgement of \$12,186.21, plus \$1,217.54 in prejudgment interest. Further, on January 14, 2011 Kahn was barred by the SEC from acting as a broker or investment advisor or otherwise associating with firms that sell securities or provide investment advice to the public.

During his tenure as a Nadex Member, Kahn failed to timely apprise Nadex that he was a party to the aforementioned regulatory matter and subsequent penalties imposed. In addition, Kahn failed to comply with this investigation when he did not respond to the Compliance Department's request for information regarding the aforementioned matter.

Additionally, during the course of this investigation, Compliance Department discovered that Kahn shared several account commonalities with other Nadex Members. As such, on May 17, 2021 Compliance sent Kahn an Investigation Inquiry requesting, among other things, information regarding his relationship with other Nadex traders, source of funding, his overall trading strategy, information regarding his general trading knowledge, background and employment details, his understanding of Nadex Rules, and again requested an explanation for the aforementioned regulatory matter, including his failure to respond to Nadex's initial request. However, Kahn failed to respond to Nadex's request for information. Based on its investigation into Kahn's Nadex account and the identified commonalities with other Nadex Members, Compliance concluded based on a preponderance of the evidence that he likely maintained more than one account during his tenure as a Member of the Exchange.

Based on Nadex's investigation, the Compliance Department determined that Kahn violated Nadex Rule 3.3(d)(i), (ii), and (iv) when he failed to disclose to Nadex the aforementioned matters and the criminal, civil, and regulatory penalties imposed therein when he created his Nadex account or any time thereafter. Further, Compliance concluded that Kahn violated Nadex Rule 5.19(k) when he responded "No" to various Nadex account application questions to purposefully omit his criminal and regulatory history. Further, Kahn violated Nadex Rule 3.1(f) by maintaining more than one Nadex account through his access and possible ownership and trading of the account in another Nadex Member's name. Finally, the Compliance Department concluded that Kahn violated Rule 3.3(a) and Member Acknowledgements and Authorizations, Section (h) of the Nadex Membership Agreement when he failed to cooperate with the Compliance Department's inquiry regarding these matters.

PENALTY: As a result of the aforementioned violations, the Nadex Compliance Department has deemed it appropriate to assess Cary Kahn a fine of \$3,000.00. Additionally, Cary Kahn's Nadex Membership has been revoked, her account terminated, and she has been permanently banned from trading on Nadex Markets, either directly for her own account or through an intermediary, or as an authorized trader on behalf of any other account.

EFFECTIVE DATE: June 21, 2021