

UNITED STATES OF AMERICA
Before the
U.S. COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:)
)
Black Diamond Futures, LLC and)
Richard Allan Finger, Jr.,)
)
Registrants.)
_____)

CFTC Docket No. SD 12-02

**NOTICE OF INTENT TO REVOKE THE REGISTRATIONS OF BLACK DIAMOND
FUTURES, LLC AND RICHARD ALLAN FINGER, JR.**

I.

The United States Commodity Futures Trading Commission (“Commission”) has received information from its staff that tends to show, and the Commission’s Division of Enforcement (“Division”) alleges and is prepared to prove that:

1. Black Diamond Futures LLC (“Black Diamond”) is a Washington limited liability company whose listed address with the Commission is 516 6th Street South, Suite 200, Kirkland, Washington 98033.

2. Black Diamond has been registered with the Commission as a Commodity Trading Advisor (“CTA”) since June 20, 2011 pursuant to Section 4m(1) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6m(1).

3. Richard Allan Finger, Jr. (“Finger”) is a Washington State resident who has been registered as an Associated Person (“AP”) of Black Diamond since July 19, 2011 pursuant to Section 4k(3) of the Act, 7 U.S.C. § 6k(3). Finger is the Chief Executive Officer and sole Principal of Black Diamond, owning at least a ten percent financial interest in Black Diamond.

4. On September 8, 2011, the United States Attorney for the Western District of Washington filed a criminal complaint against Finger, charging him with one count of wire fraud, in violation of 18 U.S.C. § 1343. *United States v. Finger*, Crim. Case No. 11-mj-424 (W.D. Wash.) (hereinafter “*U.S. v. Finger*”).

5. Also on September 8, 2011, the Securities and Exchange Commission (“SEC”) filed a civil injunctive action, alleging that Finger and Black Diamond Securities, LLC, a broker-dealer that Finger controls, committed fraud pursuant to Sections 10(b) and 15(c)(1)(A) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. *SEC v. Finger and Black Diamond Securities, LLC*, Civ. Case No. 11-1479 (W.D. Wash.).

6. On November 21, 2011, Finger pleaded guilty to one felony count of wire fraud, in violation of 18 U.S.C. § 1343. As part of his guilty plea, Finger admitted the following facts:

a. Beginning no later than late 2009, and continuing through August 2011, Finger was a registered representative and broker in Washington State doing business through broker-dealers registered with the SEC, including affiliates of Black Diamond;

b. In 2009, while acting as a registered representative for one such broker-dealer, a former employer, Finger induced an investor to give him \$670,000 to manage. Within months of obtaining the investor’s funds, Finger began to incur significant trading losses in the investor’s account. However, during the fall of 2009, Finger began falsely telling the investor that the account was doing well;

c. In approximately February 2011, Finger left his employer to open Black Diamond Securities, LLC, a registered broker-dealer that Finger owned and controlled. At approximately the same time, Finger solicited his investors to transfer their accounts from his former employer to Black Diamond Securities, LLC. As part of those

solicitations, Finger fraudulently inflated the value of his investors' accounts in written and oral statements that Finger made or transmitted to his investors. For example, Finger provided a spreadsheet to the investor whose initial investment was \$670,000 that falsely showed the investors' balance in or about February 2011 to be in excess of \$1.2 million. In reality, the investors' account was worth less than \$5,500;

d. In approximately June 2011, Finger solicited another investor to give him approximately \$1 million in cash and assets to manage. Finger and the investor agreed that Finger would use a conservative investment strategy to manage the investor's account, and that commissions and fees would be set at 30 percent of any profits Finger generated in the account;

e. Contrary to his statements to the investor, Finger churned the account, purchasing and selling over \$14 million worth of securities in approximately 160 round-trip trades during a 16-day period in June 2011. By such actions, Finger generated for himself over \$436,000 in commissions. By the end of June 2011, Finger had drained the account to a balance of less than \$404,000. By July 13, 2011 his fraudulent conduct caused the account to be worth less than \$225,000;

f. As part of his scheme and artifice to commit wire fraud, Finger churned the securities accounts of at least ten of his investors. In order to conceal the large numbers of trades he made to generate commissions, Finger emailed false account statements to at least ten investors. Finger's account statements falsely claimed that his trading was profitable and was generating relatively small commissions. To give them the appearance of legitimacy, Finger modeled his fraudulent account statements on actual

account statements that Black Diamond Securities, LLC received from its clearing broker; and

g. On or about April 20, 2011, Finger committed wire fraud by transferring \$200,000 from his personal account at his company's clearing broker, located outside Washington State, to his personal bank account, located within Washington State, in violation of 18 U.S.C. § 1343.

7. The facts set forth above constitute a basis to revoke Finger's registration pursuant to Sections 8a(2)(D)(iii) and (iv) of the Act, 7 U.S.C. §§ 12a(2)(D)(iii) and (iv).

8. Because Finger is a principal of Black Diamond and his registration is subject to revocation, the facts set forth above constitute a basis to revoke Black Diamond's registration pursuant to Section 8a(2)(H) of the Act, 7 U.S.C. § 12a(2)(H).

II.

9. Pursuant to Commission Regulation ("Regulation") 3.60(a), 17 C.F.R. § 3.60(a) (2011), Black Diamond and Finger are hereby notified that a public proceeding shall be conducted in accordance with the provisions of Regulation 3.60, 17 C.F.R. § 3.60 (2011), on the following questions:

a. Whether Black Diamond and Finger are subject to statutory disqualification from registration under Section 8a(2) of the Act as set forth in Section I above.

b. If the answer to the above question is affirmative, whether the registrations of Black Diamond as a CTA and/or Finger as an AP of a CTA should be revoked.

10. Such proceeding shall be held before a Presiding Officer in accordance with Regulation 3.60, 17 C.F.R. § 3.60 (2011), and all post-hearing procedures shall be conducted pursuant to Regulations 3.60(i)-(j), 17 C.F.R. § 3.60(i)-(j) (2011).

11. In accordance with the provisions of Regulation 3.60(a)(3), 17 C.F.R. § 3.60(a)(3) (2011), Black Diamond and Finger are entitled to file a response challenging the evidentiary bases of the statutory disqualification or to show cause why, notwithstanding the accuracy of the allegations, their registrations should not be revoked. Such response must be filed with the Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and served upon Glenn Chernigoff, Trial Attorney, Division of Enforcement, 1155 21st Street, Washington, D.C. 20581, within thirty (30) days after the date of service of this Notice upon Black Diamond and Finger, in accordance with the provisions of Regulation 3.60(b), 17 C.F.R. § 3.60(b) (2011). If either Black Diamond or Finger fails to file a timely response to this Notice, the allegations set forth herein shall be deemed to be true with respect to the non-responding registrant, and the presiding officer may issue an Order of Default in accordance with the provisions of Regulation 3.60(g), 17 C.F.R. § 3.60(g) (2011).

III.

12. The Proceedings Clerk shall serve this Notice of Intent to Revoke the Registrations of Richard Allan Finger, Jr. and Black Diamond Futures, LLC by registered or certified mail.

pursuant to Regulation 3.50, 17 C.F.R. § 3.50 (2011).

By the Commission.

A handwritten signature in black ink that reads "David A. Stawick". The signature is written in a cursive style with a horizontal line underneath the name.

David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: March 21, 2012