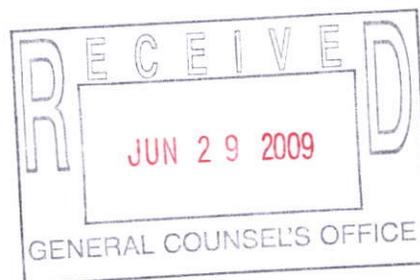


**NATIONAL FUTURES ASSOCIATION  
BEFORE THE  
BUSINESS CONDUCT COMMITTEE**

In the Matter of: )  
)  
ACM USA LLC )  
(NFA ID #388715), )  
)  
and )  
)  
EDWARD GEORGE ANDERSON )  
(NFA ID #394977) )  
)  
Respondents. )

NFA Case No. 09-BCC-011



**ANSWER**

Respondent, pursuant to NFA Compliance Rule 3-6(a)(b), answers the Complaint in this action as follows:

**JURISDICTION**

1. Respondent admits the allegation contained in Paragraph 1 of the Complaint as to its status as an "FDM".
2. Respondent admits the allegation contained in Paragraph 2 of the Complaint.

**APPLICABLE RULES**

3. The allegation of Paragraph 3 of the Complaint is a re-statement of NFA rules for which no response is required.

4. The allegation of Paragraph 4 of the Complaint is a re-statement of NFA rules for which no response is required.

### COUNT I

5. Respondent renews, re-alleges and incorporates it's responses to Paragraphs 1-4 of the Complaint, as if fully set forth herein.
6. The allegation of Paragraph 6 of the Complaint is a re-statement of NFA rules for which no response is required.
7. Respondent admits the allegation contained in Paragraph 7 of the Complaint, except to matters in mitigation attached hereto and made part hereof in the form of Affirmative Defenses.
8. Respondent lacks information or belief sufficient to answer the allegation in Paragraph 8 of the Complaint.

### COUNT II

9. Respondent renews, re-alleges and incorporates it's responses to Paragraph 1-9 of the Complaint, as if fully set forth herein.
10. Admits that Anderson was the CEO of ACM USA LLC at the time identified in the Complaint. Respondent admits that it was late filing some of its unaudited monthly financial statements and late in filing its certified annual statement for 2008, subject to matters in mitigation attached hereto and made part hereof in the form of Affirmative Defenses. Respondent

denies that these late statements evince a disregard for regulatory deadlines. Additionally, the statement "These late statements reveal a pattern of disregard for regulatory deadlines. . . ." constitutes a conclusion of law to which an answer is neither required nor proper, however, if an answer is demanded, then Respondent denies said allegation.

11. Respondent lacks information or belief sufficient to answer the allegation in Paragraph 11 of the Complaint.

#### **AFFIRMATIVE DEFENSES AND FACTORS IN MITIGATION**

12. Respondent renews, re-alleges and incorporates it's responses to Paragraph 1-12 of the Complaint, as if fully set forth herein.
13. On or about November 11, 2008, the CEO of ACM USA LLC was dismissed and replaced by Edward Anderson who was named CEO and who is now the subject of this Complaint. Said change of leadership created massive turmoil in the office as administrative documents, customer, regulatory capital and operating account accesses, policies and personnel shifts had to be modified and/or amended amid routine day-to-day operations. Additionally, Veterans Day, which was observed on November 11, 2008, was thought to be a holiday and was erroneously deducted from the 17 business day calculation which resulted in the unaudited financial

statement being filed on November 26, 2008, on the eve of the Thanksgiving holiday.

14. The 1 FR for November, 2008, was the first report actually signed by new CEO, Anderson. There was a delay (beyond our control) in obtaining a new PIN for Mr. Anderson from Chicago due to difficulty in contacting Brian Rothfuss and this caused a one-day delay in the report submission.
15. On or about mid-December, 2008, we became aware that for a variety of reasons, the company would not be able to meet the next iteration of the NFA regulatory capital increase to \$15 million dollars and the decision was made to temporarily surrender the FDM status until such time as the capital requirement could be attained by reorganization, restructuring or an investor equity infusion. As a consequence of this event, the 1 FRs for January, February and March, 2009, were delayed due to the massive undertaking of closing, refunding, tracking wire transfers, cancelled checks, and credit card refunds of almost 500 customer's accounts. The delay's in customers' acknowledging receipts of refunds and tracking cancelled checks and payments made the task of determining the exact amount of customer funds for reporting purposes extremely difficult. We felt the NFA would prefer accuracy over timeliness and as a result, the January 2009, report was filed 5 days late, February 2 days late and March 1 day late. During this period, the

NFA also requested daily, and later weekly, refund reports and reconciled cash balances which additionally burdened our very small accounting department of two persons. These delays could not be helped without sacrificing the accuracy of the reports.

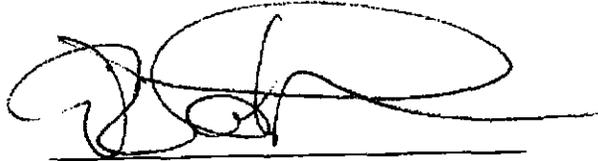
16. With respect to our Certified Annual Financial Statement, we retained the highly reputable accounting firm of Ernst & Young for that purpose at considerable cost. The auditors occupied our offices for weeks conducting their audit and failed to provide the report in a timely manner due to the fact that the auditor assigned to our inquiry, was hospitalized and her data could not be accessed, requiring the audit to be conducted anew. Additionally, this was our "first year" audit which habitually takes longer to prepare since there are no previous annual audit records to adapt. The issues with Ernst and Young were beyond our control and are verifiable. We received the audited financials on April 22, 2009, and they were submitted to the NFA immediately. Additionally, during this same period, the NFA elected to conduct an internal audit of our February 1 FR financials and our limited staff had to be re-allocated to answer that inquiry. Although this NFA review of our February 1 FR was deemed necessary by the NFA from a client protection point of view, it did serve to strain our already burdened resources and contributed to delay.

17. Although there were incidences of late reports, factors in mitigation presented here serve to clarify that any lateness was purely unintentional and certainly do not evince a disregard for regulatory deadlines. Any delays were certainly not due to the failure of Mr. Anderson to supervise, but rather the mitigating factors illuminated here. We consider all deadlines as serious mandates warranting the utmost attention and compliance.
18. Each report was filed as completely, accurately and timely as possible under the existing circumstances. We have accepted responsibility for any late filings, paid any penalties and fines associated with them and have since filed accurate and timely reports given the acute and unusual circumstances following the surrender of our license described herein have abated.
19. Following the surrender of our license in January, 2009, we ceased accepting client funds, moved swiftly and accurately to refund clients' money and cooperated fully with regulators in all respects.
20. We respectfully ask that you consider the foregoing circumstances before making any decisions on the merits of this complaint. As stated earlier, we consider reporting deadlines serious mandates and we strive to respect those deadlines, we willingly cooperate with the NFA and generally act to assist in the protection of our client's investments as a policy.

WHEREFORE, Respondent ACM USA LLC, respectfully requests that the Complaint be dismissed with prejudice.

Dated: June 29, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gregory R. LaMarca', written over a horizontal line.

Gregory R. LaMarca, Esq.

Chief Legal Officer and Acting CEO  
575 Lexington Avenue, 30<sup>th</sup> Floor  
New York, N.Y. 10022  
212-758-7200

cc: Edward Anderson  
116 Heritage Street  
Robbinsville, NJ 08691

**AFFIRMATION OF SERVICE**

I, Gregory R. LaMarca, affirm under penalty of perjury, state that I am an officer of ACM USA LLC and an attorney duly licensed to practice law before the States of New York and Connecticut, admitted to practice before the Federal Courts of the United States, and that on June 29, 2009, I served the within ANSWER, by the following means and to the addressees listed below.

**BY US MAIL**

To:  
National Futures Association  
300 South Riverside Plaza  
Suite 1800  
Chicago, IL 60606  
Attn: Legal Department-Docketing

Edward Anderson  
116 Heritage Street  
Robbinsville, NJ 08691

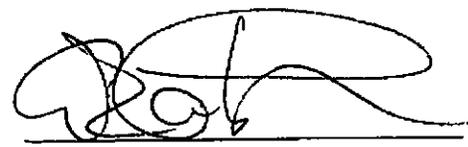
**BY FACSIMILE**

To:  
National Futures Association – 312-781-1672

**BY E-MAIL**

To:  
National Futures Association – [Docketing@nfa.futures.org](mailto:Docketing@nfa.futures.org)

Affirmed this 29<sup>th</sup> Day of June, 2009,



Gregory R. LaMarca