

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

FILED

FEB 24 2016

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of:

AK FINANCIAL HOLDINGS, INC.
(NFA ID #468072),

and

ANDI KIM
(NFA ID #332235),

Respondents.

NFA Case No. 16-BCC-002

COMPLAINT

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association (NFA), and having found reason to believe that NFA Compliance Rules (NFA Requirements) are being, have been, or are about to be violated and that the matter should be adjudicated, this Committee issues this Complaint against AK Financial Holdings, Inc. (AK Financial) and Andi Kim (Kim).

ALLEGATIONS

JURISDICTION

1. At all time relevant to this Complaint, AK Financial was registered as a commodity pool operator (CPO), forex firm, and Member of NFA, located in Los Angeles, California. As such, AK Financial was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.
2. At all times relevant to this Complaint, Kim was an associated person (AP), principal and owner of AK Financial and also an NFA Associate. As such, Kim

was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.

BACKGROUND

3. AK Financial operated one pool, the Aldebaran Fund LP (AFLP), which, at its peak, had six participants.
4. AFLP's December 31, 2014 certified Annual Report reported a receivable balance in the amount of \$4,400 due from AK Financial (AFLP's CPO and General Partner) for a loan AFLP made to AK Financial.
5. According to Kim, AK Financial had borrowed the \$4,400 from AFLP to pay firm expenses including compensation to him as well as his personal expenses such as rent, health insurance, and internet charges. Kim subsequently repaid the \$4,400 to AFLP.
6. In addition to the \$4,400 loan, AK Financial and Kim took additional loans from AFLP totaling \$10,500. Specifically, from January through May 2015, Kim took monthly loans of approximately \$2,000 per month which were used to pay AK Financial's business expenses and his personal expenses. AK Financial repaid AFLP for these loans but Kim has not yet reimbursed AK Financial for his share of these loans.

APPLICABLE RULES

7. NFA Compliance Rule 2-45 provides, in pertinent part, that no Member CPO may permit a commodity pool to use any means to make a direct or indirect loan or advance of pool assets to the CPO or any other affiliated person or entity.

8. NFA Compliance Rule 2-4 provides that Members and Associates shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business.
9. NFA Compliance Rule 2-9(a) provides that each Member shall diligently supervise its employees and agents in the conduct of their commodity futures activities for or on behalf of the Member. Each Associate who has supervisory duties shall diligently exercise such duties in the conduct of that Associate's commodity futures activities on behalf of the Member.

COUNT I

VIOLATION OF NFA COMPLIANCE RULES 2-45 AND 2-4: FACILITATING PROHIBITED LOANS FROM AFLP TO AK FINANCIAL AND KIM, AND FAILING TO UPHOLD HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE.

10. The allegations contained in paragraphs 1 through 8 are re-alleged as paragraph 10.
11. NFA commenced an exam of AK Financial on July 13, 2015 and determined that -- in addition to the loans alleged above in the amount of \$4,400 and \$10,500 -- AK Financial borrowed an additional \$7,640 from AFLP by having AFLP reimburse participants \$2,000 in upfront fees they were improperly charged, which AK Financial should have reimbursed, and pay \$5,640 of AK Financial's expenses which, according to the disclosure document, should have been paid by AK Financial.
12. The circumstances surrounding the \$2,000 in upfront fees are as follows. AK Financial charged \$2,000 in upfront fees to AFLP. However, instead of AFLP paying these upfront fees, two participants of AFLP bore the total cost of these upfront fees which Kim deposited in AK Financial's bank account. Kim assured

these two participants that they would be reimbursed the upfront fees that they paid when they redeemed their interests in the AFLP. However, when Kim reimbursed these two participants the \$2,000 in upfront fees, he used AFLP's funds – not those of AK Financial, which was the recipient of the upfront fees paid by the two participants of AFLP -- to pay the reimbursements. This constituted an improper advance or loan from AFLP to AK Financial of \$2,000.

13. With respect to the \$5,640 in expenses that AFLP paid, they were paid in contravention of AFLP's pool disclosure document which required, in pertinent part, that AK Financial pay all expenses of AFLP up to \$25,000 during the first 12 months of AFLP's operations. Therefore, AK Financial was required to pay the \$5,640 in expenses of AFLP – which included \$3,000 for AFLP's 2014 audit and tax filing, \$2,600 in NFA fees and dues, and \$40 in bank fees -- as they were under \$25,000 and incurred during AFLP's first twelve months of operation. However, instead, AK Financial had AFLP pay these expenses which constituted an advance or loan to AK Financial of \$5,640.
14. NFA advised Kim that AK Financial was required to reimburse AFLP for the additional \$7,640 it received in advances and loans for the upfront fees it reimbursed and the expenses it paid on behalf of AK Financial. However, Kim represented that neither he nor AK Financial had the financial wherewithal to repay AFLP.
15. Additionally, between March 2014 and July 2015, Kim took a total of six personal loans ranging from \$2,600 to \$10,000 from AFLP, which was his primary source of "income" during this time. Three of these loans appear to be still outstanding. The principal amount of these outstanding loans is \$20,000 and they have

annual interest rates ranging from 8% to 20%. Again, neither Kim nor AK Financial apparently is in a financial position to repay these loans.

16. By reason of the foregoing acts and omissions, AK Financial is charged with violating NFA Compliance Rule 2-45 and AK Financial and Kim are charged with violating NFA Compliance Rule 2-4.

COUNT II

VIOLATION OF NFA COMPLIANCE RULE 2-9(a): FAILURE TO SUPERVISE.

17. The allegations contained in paragraphs 1 through 6, 9, and 11 through 15 are re-alleged as paragraph 17.
18. AK Financial has two AP/principals, Kim and Tim Yu (Yu). Kim is responsible for AK Financial's operations while Yu is the financial backer of the firm. Kim conducted all trading for AFLP, solicited and communicated with AFLP's participants, prepared and distributed AFLP's disclosure document and AK Financial's account statements, and submitted all required regulatory filings to NFA. Further, Kim had full authority to transfer funds out of AFLP's operating bank account and was the individual who created and/or facilitated the loans and advances from AFLP to AK Financial.
19. By reason of his position at the firm, Kim had a duty to diligently supervise the firm's operations and activities to ensure that they complied with NFA Requirements. However, as evidenced by the numerous impermissible loans and advances that were made by AFLP to AK Financial, it is apparent that Kim failed to adequately carry out his supervisory responsibilities.
20. By reason of the foregoing acts and omissions, AK Financial and Kim are charged with violations of NFA Compliance Rule 2-9(a).

PROCEDURAL REQUIREMENTS

ANSWER

You must file a written Answer to the Complaint with NFA within thirty (30) days of the date of the Complaint. The Answer shall respond to each allegation in the Complaint by admitting, denying or averring that you lack sufficient knowledge or information to admit or deny the allegation. An averment of insufficient knowledge or information may only be made after a diligent effort has been made to ascertain the relevant facts and shall be deemed to be a denial of the pertinent allegation.

The place for filing an Answer shall be:

National Futures Association
300 South Riverside Plaza. Suite 1800
Chicago, Illinois 60606
Attn: Legal Department-Docketing
E-Mail: Docketing@nfa.futures.org
Facsimile: 312-781-1672

Failure to file an Answer as provided above shall be deemed an admission of the facts and legal conclusions contained in the Complaint. Failure to respond to any allegation shall be deemed an admission of that allegation. Failure to file an Answer as provided above shall be deemed a waiver of hearing.

POTENTIAL PENALTIES, DISQUALIFICATION AND INELIGIBILITY

At the conclusion of the proceedings conducted in connection with the issuance of this Complaint, the Committee may impose one or more of the following penalties:

- (a) expulsion or suspension for a specified period from NFA membership;
- (b) bar or suspension for a specified period from association with an NFA Member;
- (c) censure or reprimand;

- (d) a monetary fine not to exceed \$250,000 for each violation found; and
- (e) order to cease and desist or any other fitting penalty or remedial action not inconsistent with these penalties.


The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act.

Respondents in this matter who apply for registration in any new capacity, including as an AP with a new sponsor, may be denied registration based on the pendency of this proceeding.

Pursuant to CFTC Regulation 1.63, penalties imposed in connection with this Complaint may temporarily or permanently render Respondents who are individuals ineligible to serve on disciplinary committees, arbitration panels and governing boards of a self-regulatory organization, as that term is defined in CFTC Regulation 1.63.

**NATIONAL FUTURES ASSOCIATION
BUSINESS CONDUCT COMMITTEE**

Dated: 02/24/2016

By: 
Chairperson

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