

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

FILED

JUN - 4 2019

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of:)
)
PLUTUS CAPITAL MANAGEMENT LLC)
(NFA ID #493877),)
)
and)
)
MARK E. PHILIPS)
(NFA ID #495622),)
)
Respondents.)

NFA Case No. 19-BCC-006

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 Plutus Capital Management LLC (Plutus) and Mark E. Philips (Philips).

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, Plutus was a commodity pool operator NFA Member in Wichita, Kansas. As such, Plutus 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, Philips was the sole associated person (AP) and a listed principal of Plutus, and an NFA Associate.

BACKGROUND

3. Plutus has been an NFA Member since June 2016. Philips, who is the firm's sole AP and principal, is responsible for the overall operations of the firm. Plutus operates a commodity pool called the Plutus Venture Fund, LP (the Fund) which began trading in December 2016. In total, the Fund received over \$623,000 in capital contributions from at least 15 participants.
4. Since beginning trading in December 2016, the Fund has sustained substantial trading losses including a loss of approximately 36% in December 2017 and a loss of approximately 73% in January 2018. As a result, the Fund's net asset value was less than \$45,000 as of May 31, 2018.
5. Given the Fund's significant trading losses, as well as indications of possible prohibited loans from the Fund to Plutus, NFA commenced an examination of Plutus in July 2018.
6. NFA's exam found numerous deficiencies, including excess Fund withdrawals and improper redemptions by Philips; a failure by Plutus to include required performance information and an updated break-even analysis in the Fund's disclosure document; and a failure by Plutus to maintain required records and provide timely account statements to the Fund's participants. In addition, Philips provided false and misleading information to NFA and was repeatedly late in responding to NFA's requests for records.
7. However, the overarching problem at Plutus, as revealed during NFA's exam, was Philips' apparent disinterest in, and/or lack of attention to, regulatory requirements and his sloppy business practices which were inconsistent with high standards of commercial honor and just and equitable principles of trade.

APPLICABLE RULES

8. NFA Compliance Rule 2-4 provides, in pertinent part, 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 2-2(f) provides that no Member or Associate shall willfully submit materially false or misleading information to NFA or its agents.
10. NFA Compliance Rule 2-5 requires, in pertinent part, that each Member and Associate shall cooperate promptly and fully with NFA in any NFA investigation, inquiry, audit or examination.
11. NFA Compliance Rule 2-13 provides, in pertinent part, that any Member who violates any of the Commodity Futures Trading Commission's (CFTC) Regulations 4.1, 4.7, 4.12 and 4.16 through 4.41 shall be deemed to have violated an NFA Requirement.

COUNT I

VIOLATION OF NFA COMPLIANCE RULE 2-4: TAKING EXCESS WITHDRAWALS AND IMPROPER REDEMPTIONS FROM THE FUND AND IMPROPERLY ALLOCATING START-UP EXPENSES TO THE FUND INSTEAD OF PLUTUS.

12. The allegations contained in paragraphs 1 through 8 are re-alleged as paragraph 12.
13. Philips did not set up a separate bank account for Plutus and, instead, used his personal bank account as Plutus's operating account. In reviewing the statements for Philips' bank account, as well as the Fund's financial records, NFA determined that Philips made monthly withdrawals from the Fund over and above what he was entitled to receive for management fees and his equity interest in the Fund.

14. Philips tried to make it appear that he had reimbursed the Fund for his excess monthly withdrawals by engaging in a check-kiting scheme. On four occasions, Philips deposited checks into the Fund's bank account in purported payment of the receivables he owed the Fund for his excess withdrawals. Philips made these check deposits towards the end of the month which resulted in the receivable being removed from the Fund's month-end statements that were given to the Fund's administrator. However, a few days later, the deposited checks were returned for non-sufficient funds causing the receivable to be reinstated on the Fund's books.

15. The details of Philips' phony deposits scheme are illustrated in the following chart:

Amount of Check	Date Deposited into Fund	Date Returned for NSF
\$6,100	June 29, 2017	July 5, 2017
\$6,112	October 30, 2017	November 2, 2017
\$3,635	November 29, 2017	December 4, 2017
\$9,647	December 29, 2017	January 4, 2018

16. Another instance of Philips withdrawing money from the Fund to which he was not entitled occurred in August and September 2017, when a Fund participant made redemption requests totaling \$13,000. The participant's account statement reflected the \$13,000 redemption. However, the participant actually only received \$6,000 of his requested redemption of \$13,000 and Philips diverted the balance of \$7,000 to himself. Philips eventually repaid the \$7,000 to the participant.

17. Plutus and Philips also improperly accounted for redemptions from the Fund. Plutus and Philips took partial redemptions from the Fund in mid-month in January, February and March 2017. However, they reflected these redemptions

as occurring at the end of the month, allowing them to improperly receive full allocations of gains in these months rather than partial allocations. As a result of this practice, Plutus and Philips received approximately \$1,600 more than they were entitled to receive.

18. Philips also improperly charged the start-up expenses to the Fund rather than to Plutus contrary to the express terms of the Fund's offering memorandum which provided that "All expenses of the Offering and organization of the Partnership (including legal and other expenses) (Organizational Expenses) will be paid by the General Partner without reimbursement from the partnership."
19. In an attempt to rectify the foregoing situation, Philips – instead of having Plutus reimburse the Fund for the start-up expenses – created a receivable for the amount of such expenses on the books of the Fund.
20. By reason of the foregoing acts and omissions, Plutus and Philips are charged with violating NFA Compliance Rule 2-4.

COUNT II

VIOLATION OF NFA COMPLIANCE RULES 2-2(F) AND 2-5: PROVIDING FALSE AND MISLEADING INFORMATION TO NFA AND FAILING TO PROMPTLY RESPOND TO NFA'S REQUESTS FOR RECORDS.

21. The allegations contained in paragraphs 1 through 6, 9 and 10 are re-alleged as paragraph 21
22. Philips initially told NFA's exam team that neither he nor any of his family had personal trading accounts. However, NFA subsequently discovered that Philips had a total of three futures trading accounts at different FCMs. These accounts had total deposits of approximately \$140,000 and traded from February 2014 to October 2016.

23. Philips also provided false information to NFA's exam team about customer accounts that he had managed. Several times, Philips represented to the exam team that, other than the Fund, neither he nor Plutus had managed any customer accounts. Yet, NFA independently learned that Philips had, in fact, been managing a total of ten customer accounts for several years.
24. Besides providing false information to NFA, Philips was repeatedly late in responding to NFA's requests for information and records. Further, there were numerous instances when the NFA exam team would schedule phone calls with Philips which Philips would fail to answer or cancel on short notice. Philips also failed to respond to numerous emails the NFA exam team sent to him, requiring the exam team to follow-up several times to obtain the information requested.
25. By reason of the foregoing acts and omissions, Plutus and Philips are charged with violating NFA Compliance Rules 2-2(f) and 2-5.

COUNT III

VIOLATION OF NFA COMPLIANCE RULE 2-13: FAILING TO INCLUDE REQUIRED PERFORMANCE INFORMATION AND AN UPDATED BREAK-EVEN ANALYSIS IN THE FUND'S DISCLOSURE DOCUMENT; FAILING TO MAINTAIN REQUIRED RECORDS; AND FAILING TO PROVIDE TIMELY ACCOUNT STATEMENTS TO THE FUND'S PARTICIPANTS.

26. The allegations contained in paragraphs 1 through 6, and 11 are re-alleged as paragraph 26
27. The Fund's disclosure documents failed to include the performance for the ten accounts Philips managed, even though such performance was required to be disclosed. Seven of these accounts had overall losses ranging from 27% to 100%, while three other accounts had overall gains ranging from 1% to 58%.

28. The Fund's disclosure documents also presented an inaccurate break-even analysis which reflected a break-even percentage of 22% based on a minimum initial investment of \$100,000 and operating expenses of approximately \$20,000.
29. However, at the time of NFA's exam, the Fund only had assets of about \$40,000 and, as such, the break-even percentage would have been much higher than the percentage presented in the disclosure documents since the Fund's operating expenses of approximately \$20,000 amounted to more than half of the Fund's assets. Yet, Plutus failed to update its disclosure document to reflect this higher break-even percentage.
30. Philips received funds from a number of individuals – who were family and friends and, in some cases, also Fund participants – which he deposited into his personal bank account. These deposits ranged from \$5,000 to \$25,000 and totaled approximately \$98,000.
31. NFA asked Philips about these deposits and he said they represented loans to him which the lenders did not expect him to repay. NFA asked Philips for any documentation evidencing these purported loans but he claimed that none existed.
32. Accordingly, NFA asked Philips to obtain written representations from the individuals who gave him these funds confirming that there were loans to him. However, to date, Philips has failed to comply with this request, although he claims he has attempted to obtain this information but his attempts have been unsuccessful. Philips also failed to provide requested contact information to NFA for one of the above individuals.

33. Plutus also did not maintain required bank records for the Fund or Philips' personal bank accounts. Instead, Philips relied on the banks to produce these bank records for NFA's exam team.
34. Additionally, account statements were not prepared properly for the Fund and were not distributed in a timely manner. For example, during 2018, account statements were sent from three days to 34 days late. The statements were completed by the administrator on time, but Philips would not get around to reviewing them or sending them to participants until after their due date.
35. By reason of the foregoing acts and omissions, Plutus and Philips are charged with violating NFA Compliance Rule 2-13.

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

Email: 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.

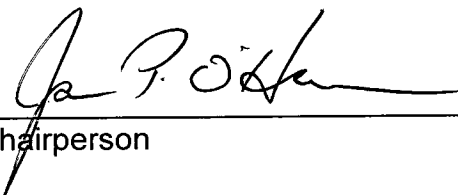
The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act.

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: 06/04/2019

By: 
Chairperson

m/rvh/Plutus Complaint