

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

FILED
NOV 11 2019
NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of:)
)
ELKHORN INVESTMENTS LLC)
(NFA ID #475575),) NFA Case No. 19-BCC-013
)
Respondent.)

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 Elkhorn Investments LLC (Elkhorn).

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, Elkhorn was a commodity pool operator (CPO) and commodity trading advisor NFA Member located in Chicago, Illinois. As such, Elkhorn was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.

BACKGROUND

2. At all times relevant to this Complaint, Elkhorn operated two pools – Elkhorn Fundamental Commodity Strategy ETF (Elkhorn Fundamental) and Elkhorn Commodity Rotation Strategy ETF (Elkhorn Commodity). Elkhorn also operated

as an SEC-registered investment adviser from August 2013 until on or about April 18, 2018.

3. In July 2018, Elkhorn filed unaudited annual pool financial statements for fiscal year 2018 (April 1, 2017 to March 31, 2018) for the Elkhorn Fundamental and Elkhorn Commodity pools. However, because these statements were annual pool statements and both pools had outstanding investments (including open futures contracts) as of March 31, 2018, these statements were required to be certified by an independent public accountant but were not.
4. Such statements also noted a "Subsequent Event," viz. that the Board of Directors had voted to terminate and liquidate both pools. Thereafter, on April 13, 2018, the pools no longer accepted new orders, and trading for the pools was halted prior to the market opening on April 16, 2018. On April 17, 2018, both pools ceased operations, and Elkhorn submitted unaudited final annual reports (also known as a "liquidation statements") to NFA for the Elkhorn Fundamental and Elkhorn Commodity pools. However, the Elkhorn Fundamental and Elkhorn Commodity pools were not eligible to file unaudited liquidation statements under CFTC Regulation 4.22(c)(7).
5. On September 4, 2018, Elkhorn's former chief financial officer advised NFA that Elkhorn had ceased all operations and no longer existed as a legal entity. NFA confirmed with the Delaware Division of Corporations that Elkhorn's LLC status was cancelled effective October 21, 2018.
6. NFA also spoke to Elkhorn's former chief executive officer regarding Elkhorn's obligation to file certified 2018 annual statements for the pools. NFA advised the

CEO more than once that NFA could not waive the requirement that Elkhorn file certified 2018 annual statements and liquidation statements for the pools. On March 28, 2019, NFA sent Elkhorn's former CEO an email reminding him that Elkhorn is still an NFA Member and is required to file certified annual statements and liquidation statements for its pools. To date, these statements have not been filed by Elkhorn.

APPLICABLE RULES

7. 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.
8. CFTC Regulation 4.22(c) provides, in pertinent part, that each CPO must distribute a certified annual report to each pool participant and file a copy of the report with NFA within 90 calendar days after the end of the pool's fiscal year; and further provides that whenever a pool ceases trading, each CPO must distribute a final annual report (i.e., a liquidation statement) to each participant and file a copy of the liquidation statement with NFA within 90 days after the permanent cessation of trading.

COUNT I

VIOLATION OF NFA COMPLIANCE RULE 2-13: FAILING TO FILE CERTIFIED ANNUAL STATEMENTS AND LIQUIDATION STATEMENTS FOR ELKHORN'S POOLS.

9. The allegations contained in paragraphs 1 through 8 are re-alleged as paragraph 9.

10. Elkhorn has failed to file certified annual statements for fiscal year 2018 and liquidation statements for the Elkhorn Fundamental and Elkhorn Commodity pools, as required by NFA Compliance Rule 2-13.
11. By reason of the foregoing acts and omissions, Elkhorn is 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

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.

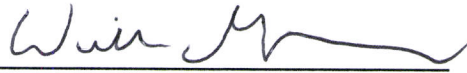
The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act.

Respondents in this matter who apply for registration in any new capacity, including as an associated person 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: 11/11/2019

By: 
Chairperson