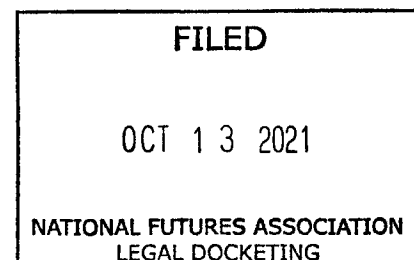


NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE



In the Matter of:)
)
K-RATIO ADVISORY LLC)
(NFA ID #517822))
)
and)
)
K-RATIO BROKERAGE LLC)
(NFA ID #519846))
)
and)
)
KYLE DAVID LINTNER)
(NFA ID #331937),)
)
Respondents.)

NFA Case No. 21-BCC-013

COMPLAINT

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association (NFA) and having 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 K-Ratio Advisory LLC (KRA), K-Ratio Brokerage LLC (KRB), and Kyle David Lintner (Lintner).

ALLEGATIONS

JURISDICTION

1. KRA was a commodity trading advisor (CTA) Member of NFA from January 16, 2019 to September 24, 2021. As such, KRA was required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.

2. KRB was an introducing broker (IB) Member of NFA from September 6, 2019 to September 24, 2021. As such, KRB was required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.
3. Lintner was an associated person (AP) of KRA and KRB and approved as an NFA Associate from January 16, 2019 to June 23, 2021. As such, Lintner was required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof. KRA and KRB are liable for violations of NFA Requirements committed by Lintner in the course of his activities on behalf of the firms.

BACKGROUND

4. KRA and KRB are located in Chicago, Illinois. Although KRA remains registered with the Commodity Futures Trading Commission (CFTC) as a CTA, its withdrawal from NFA membership became effective on September 24, 2021. On the same date, KRB's withdrawal as an IB and as an NFA Member also became effective.
5. Russell Gallemore is the president, chief executive officer (CEO), and sole owner of KRA and KRB. Gallemore has never been an NFA Associate, but currently is the sole principal of KRA and a former principal of KRB.
6. Lintner was the sole AP of KRA and KRB as well as a principal of both firms, until he withdrew his statuses with them on June 23, 2021.
7. While employed at KRA and KRB, Lintner's title was principal and managing director. Lintner was also promoted in news articles and YouTube interviews as the director of markets at "K Ratio."
8. K-Ratio X LLC (KRX) is a non-Member, unregistered affiliate of KRA and KRB. KRX was organized on June 5, 2020 in the State of Illinois as a limited liability

company. Up until July 13, 2021, the Illinois Secretary of State records listed Gallemore, Lintner and another individual as managers of KRX, and Lintner as the firm's registered agent.

9. KRA, KRB and KRX have used the "K Ratio" name interchangeably when referring to themselves.
10. NFA opened an inquiry into KRA and KRB in April 2021 since, among other reasons, the firms had represented to NFA that they were inactive, even though the website they operated indicated otherwise (e.g., talked about a diesel fuel hedging program, and discussed their NFA and CFTC statuses).
11. As part of the inquiry, NFA sent a letter on June 25, 2021 to Gallemore regarding several issues, including requesting support for statements made on the website and for more information about KRX.
12. A few hours later, NFA received a letter from an attorney representing KRA and KRB regarding information that allegedly had recently come to the firms' attention involving KRX.
13. The letter explained that KRX used off-exchange swap option contracts to provide transportation carriers price protection above a strike price for a designated type and quantity of diesel fuel, which is hereafter referred to as the "Fuel Protection Program."
14. The letter indicated that KRX collected premiums of approximately \$5 million for the options and faced potential liability on outstanding options that exceeded \$12.5 million.
15. The letter expressed uncertainty around the role of KRA and KRB with the options but acknowledged that some or all the premium payments and amounts paid out

in settlement of expired options were made through a bank account in the name of KRA.

16. Given these circumstances, NFA commenced an exam in June 2021 to investigate KRA and KRB and their activities and dealings with KRX.
17. As alleged below in more detail, KRA and KRB knew or should have known that neither of them, nor their affiliate KRX, had the financial wherewithal to sponsor and operate the Fuel Protection Program. Nevertheless, KRA, KRB and persons affiliated with them used misleading promotional material and communications to promote and describe the Fuel Protection Program, confused their identity and role with respect to the Fuel Protection Program and made misleading statements about the hedging strategy and other aspects of the Fuel Protection Program.
18. Lintner, as the sole AP/principal of KRA and KRB, was the only individual who had a formal regulatory obligation to ensure the firms conducted themselves in compliance with NFA Requirements. Despite this obligation, Lintner knew or should have known that KRA's trading was not adequate to hedge the exposure on the options and that the firms otherwise had insufficient funds to meet outstanding obligations to Counterparties under the options. Lintner knew or should have known that any statements about KRA and KRB's involvement in the Fuel Protection Program and how the program operates, including the use of a hedging strategy, were misleading.

APPLICABLE RULES

19. NFA Compliance Rule 2-2(a) prohibits Members and Associates from cheating, defrauding, or deceiving, or attempting to cheat, defraud, or deceive, any commodity futures or swap customer or counterparty.

20. NFA Compliance Rule 2-4 requires Members and Associates to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business and swaps business.
21. NFA Compliance Rule 2-29(b) provides, in pertinent part, that no Member or Associate shall use any promotional material which is likely to deceive the public, or contains any material misstatement of fact, or which the Member or Associate knows omits a fact if the omission makes the promotional material misleading.
22. NFA Bylaw 301(b) provides, in pertinent part, that no person may be associated with a Member of NFA unless the person is registered with NFA as an NFA Associate or is an NFA Member.
23. NFA Compliance Rule 2-9(a) requires Members to diligently supervise their employees and agents in the conduct of their commodity interest activities for or on behalf of the Members.

COUNT I

VIOLATIONS OF NFA COMPLIANCE RULE 2-4: FAILURE TO OBSERVE HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE BY OPERATING AN UNREGULATED TRADING PROGRAM WITHOUT HAVING ADEQUATE FINANCIAL WHEREWITHAL TO DO SO.

24. The foregoing paragraphs are realleged as if fully stated herein.
25. NFA's exam found that, starting in April 2020, KRA – and later KRX – offered options as hedging instruments to approximately 40 freight and transportation carriers (referred to hereafter as the "Counterparties") through the Fuel Protection Program.
26. In connection with the Fuel Protection Program, KRA and KRX executed more than 130 written agreements (referred to hereafter as "Transaction

- Confirmations") with the Counterparties. Lintner executed the Transaction Confirmations with Counterparties on KRA's behalf until June 2020, when he began executing Transaction Confirmations on KRX's behalf.
27. Under the terms of the Transaction Confirmations, premiums paid by Counterparties were deposited into KRA's bank account. The premium deposits totaled more than \$3.3 million through June 30, 2021.
 28. The Counterparties' premium payments into KRA's bank account appear to have been the primary source of funding to make payouts to Counterparties in settlement of expired options and to pay other miscellaneous expenses (e.g., wages, software development).
 29. Although the premiums collected through March 2021 appeared to have been sufficient to cover payouts to Counterparties in settlement of expired options, KRA, KRB and persons affiliated with them did not have sufficient funds to fulfill their obligations to the Counterparties when the price of the underlying NYMEX diesel fuel contract started to move against KRX in April 2021.
 30. As of late June 2021, over 30 Counterparties were owed more than \$2.5 million for the settlement of recently expired options and faced projected payments of more than \$10 million for open options due to expire through April 2023.
 31. According to information obtained through NFA's exam, KRX has no known liquid assets.
 32. KRB's only disclosed account consists of a bank account, which had a balance of about \$70,000 as of August 12, 2021.

33. KRA disclosed one bank account, with a balance of approximately \$1,100 as of August 12, 2021. Gallemore and another individual whom NFA interviewed confirmed that only they, and not Lintner, had access to KRA's bank account.
34. KRA also disclosed a trading account at a futures commission merchant (FCM 1), with a balance of approximately \$189,000 as of August 11, 2021.
35. Gallemore executed documents to open KRA's trading account at FCM 1 in August 2020. Lintner was the account controller and the only individual with responsibility for trading in the account.
36. Trading in KRA's account consisted of crude and heating oil futures and options. However, the trading volume from August 2020 through June 2021 was not an adequate hedge of KRX's exposure on the unexpired options during this period. KRA's long heating oil futures position also lessened over time and did not exist as of May 2021.
37. Gallemore, Lintner, and others affiliated with KRA and KRB received copies of KRA's activity statements from FCM 1. Those statements showed the trading Lintner was conducting did not appear to be an adequate hedge on KRX's exposure on the unexpired options.
38. Although the premiums collected on options from August 2020 through March 2021 appeared to have been sufficient to cover KRX's market exposure during that period, KRA, KRB and persons affiliated with them did not have sufficient funds to fulfill their obligations to the Counterparties.
39. Without an adequate hedging strategy in place to manage the price risk associated with the options, KRX needed sufficient capital to pay the

Counterparties when the price of the underlying NYMEX diesel fuel contract began moving in their favor starting in April 2021.

40. However, based on the aggregated balances in the accounts described above in paragraphs 31 through 34, the liquid assets of KRA, KRB and KRX appeared to total less than \$260,000.
41. After factoring the known liquid assets into the estimated amount owed to Counterparties on expired options through June 2021, the shortfall appeared to total more than \$2.2 million.
42. NFA's exam found that KRA, KRB and persons affiliated with them knew or should have known of the shortfall in late May 2021, as evidenced by the decision to make settlement payments on June 11, 2021 to only 18 of about 30 Counterparties on options that expired in-the-money in May.
43. Moreover, notwithstanding the shortfall, Counterparties were solicited to enter into new Transaction Confirmations.
44. Three Counterparties paid premiums totaling slightly more than \$100,000 that were deposited to KRA's bank account on June 9, 2021.
45. Two days later, settlement payments were made from KRA's bank account to certain existing Counterparties. Due to insufficient funds in KRA's bank account, settlement payments could not have been made to all of the Counterparties without the \$100,000 in premiums.
46. To preserve the only known liquid assets of KRA and KRB until NFA could complete its exam into the firms' dealings with KRX, NFA instructed KRA and KRB not to disburse funds from any of their accounts. KRA nevertheless used bank funds to pay a public relations firm and individuals employed by KRX.

47. As an added measure to preserve the known liquid assets, NFA entered into a letter agreement with KRA and KRB on July 23, 2021, in which they agreed to freeze all deposits into and withdrawals from all KRA and KRB bank and trading accounts without NFA's prior written approval.
48. At about the same time, KRX began notifying Counterparties of the impending default under the Transaction Confirmations, saying that "K-Ratio X is not financially able today to honor the OTC option transactions for unexpired contracts," and that "K-Ratio X does not have sufficient funds to make such payments to all persons holding Open Contracts."
49. KRX also sought to enter into a "Universal Settlement Agreement" (the "Agreement") with all Counterparties with open options. Under the terms of the Agreement, Counterparties would be repaid their cash premiums paid (not including non-cash credits for rollovers from previous contracts) in exchange for releasing KRX and its "Affiliated Parties" from liability.
50. According to information NFA obtained from KRA and KRB in early September 2021, all but six Counterparties had executed the Agreement.
51. As alleged above, KRA, KRB, and individuals acting on their behalf knew or should have known that "K Ratio" had insufficient funds to operate the Fuel Protection Program without, and possibly even with, a meaningful hedging strategy.
52. As the individual responsible for trading and controlling KRA's account at FCM 1, Lintner knew or should have known that the futures trading he conducted was not adequate to hedge the risk associated with the options. Further, even though Lintner did not have access to KRA's bank account, he executed every

Transaction Confirmation with Counterparties. Therefore, Lintner knew or should have known that the premiums KRA collected—by themselves—were insufficient to operate the Fuel Protection Program.

53. By reason of the foregoing acts and omissions, KRA, KRB and Lintner are charged with violating NFA Compliance Rule 2-4.

COUNT II

VIOLATION OF NFA COMPLIANCE RULES 2-2(a), 2-4 AND 2-29: FAILURE TO OBSERVE HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE BY USING MISLEADING AND DECEPTIVE PROMOTIONAL MATERIAL AND COMMUNICATIONS TO SOLICIT AND DESCRIBE THE FUEL PROTECTION PROGRAM.

54. The foregoing paragraphs are realleged as if fully stated herein.
55. NFA Members and Associates are prohibited from using deceptive and misleading promotional material and from engaging in misleading communications with the public. However, KRA, KRB and Lintner misled the Counterparties in numerous ways.
56. KRA, KRB and KRX purposely blurred the lines between themselves, which made it unclear and confusing which "K Ratio" entity offered and operated the Fuel Protection Program.
57. The Transaction Confirmations with Counterparties since June 2020 have included references to CFTC registration and NFA membership even though KRX has never had any CFTC registration or NFA membership status.
58. Further, even though KRA ceased executing the Transaction Confirmations in June 2020, the Transaction Confirmations entered into afterwards continued to use KRA's Federal Tax ID and continued to direct Counterparties to make payments to KRA's bank account, which funds KRA accepted.

59. As alleged above, KRA, KRB and KRX used the "K Ratio" name interchangeably when referring to themselves. Monthly account statements provided to the Counterparties regarding their options were prominently branded "K Ratio."
60. The monthly account statements also featured the following declaration, which ascribed the brand name "K-Ratio" to KRA and KRB (emphasis added):
- K-Ratio Advisory, LLC (KRA) is registered with CFTC as a commodity trading advisor and K-Ratio Brokerage, LLC (KRB) is registered with CFTC as an introducing broker. KRA and KRB (**collectively, K-Ratio**) are also member firms of NFA in their respective capacities.
61. KRA, KRB and KRX also shared the same website (www.K-Ratio.com), which employed the brand name "K-Ratio" prominently throughout the web pages.
62. The shared website also contained the declaration described in paragraph 60 above and marketed the Fuel Protection Program.
63. A section on the website titled, "How the Program Works," referred to the Fuel Protection Program and included the statement, "K-Ratio is an NFA member firm and CFTC-registered CTA, IB and Swap Firm." NFA's records show that neither KRA nor KRB was ever approved as a swap firm.
64. In interviews with NFA, several Counterparties stated that individuals they talked to about the Fuel Protection Program referred to themselves as "K-Ratio" and did not distinguish for which "K-Ratio" entity they were acting.
65. Except for appearing on the Transaction Confirmations, KRX's name was absent from materials associated with the Fuel Protection Program (e.g., website, monthly activity statements).
66. KRA and KRB also misled Counterparties through promotional material and communications about how "K Ratio's" Fuel Protection Program worked.

67. "FAQs" on the website included answers that implied the Fuel Protection Program employed a hedging strategy. For example, in response to the question, "How can I be assured K-Ratio will issue payment?" the website stated:
- [w]e do not hold your risk either, we simply transfer the risk from your company into the marketplace through futures, options, and swap agreements, and the subsequent positions are what enable payment to the program user.
68. A response to another FAQ stated that "K-Ratio" required full premium payment in advance to "lock in future fuel prices" because market conditions changed daily. The FAQ also stated that the "premium is used to directly cover your risk of higher fuel costs in the market."
69. At least one Counterparty told NFA that Lintner verbally discussed a hedging strategy during the solicitation process and talked about purchasing diesel futures to protect against downside risk.
70. However, the bank and trading accounts NFA reviewed during the exam indicate that no premiums paid by Counterparties were used to lock in future fuel prices, hedge, or otherwise transfer risk.
71. To provide assurance that "K-Ratio" would issue necessary payments under the Fuel Protection Program, an FAQ asserted, "there is no possibility of default."
72. Contrary to that guarantee, and as alleged in Count I, KRX apparently defaulted on its obligations to all persons holding open option contracts under the Fuel Protection Program.
73. KRA, KRB and Lintner knew or should have known that statements made to Counterparties, as well as public statements on the "K-Ratio" website, about their

role with the Fuel Protection Program, the efforts to hedge risk associated with the options, and the default risk were inaccurate and misleading.

74. By reason of the foregoing acts and omissions, KRA, KRB, and Lintner are charged with violating NFA Compliance Rules 2-2(a) and 2-29 and with further violations of NFA Compliance Rule 2-4.

COUNT III

VIOLATION OF NFA BYLAW 301(b): ALLOWING AN UNREGISTERED INDIVIDUAL TO ACT AS AN ASSOCIATED PERSON WITHOUT BEING REGISTERED IN SUCH CAPACITY AND AN NFA ASSOCIATE.

75. The foregoing paragraphs are realleged as if fully stated herein.
76. As CEO of KRA and KRB, Gallemore was ultimately responsible for overseeing the firms, their operations, Lintner, and the firms' other employees and agents.
77. Gallemore also was the individual at KRA and KRB with authority to hire and fire Lintner, the firms' sole AP, and apparently exercised his authority over Lintner, who was placed on administrative leave in June 2021.
78. Given Gallemore's role in the supervisory chain-of command, KRA and KRB should have ensured that he was registered as an AP of the firms and a NFA Associate, but failed to do so.
79. By reason of the foregoing acts and omissions, KRA and KRB are charged with violation of NFA Bylaw 301(b).

COUNT IV

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

80. The foregoing paragraphs are realleged as if fully stated herein.

81. Each Member is obligated to diligently supervise its employees and agents in all aspects of their commodity interest activities on behalf of the Member. However, as the alleged above, KRA and KRB failed to fulfill their supervisory obligations.
82. As alleged above, KRA and KRB knowingly entangled and blurred their corporate identities and NFA membership/CFTC registration statuses with KRX and the Fuel Protection Program.
83. KRA and KRB utilized promotional material and communications with Counterparties to make inaccurate and misleading statements about their role with the Fuel Protection Program, the efforts to hedge risk associated with the options, and the default risk since the "K Ratio" companies did not have the financial wherewithal to meet obligations to Counterparties under the Transaction Confirmations.
84. KRA and KRB also failed to ensure Gallemore was registered as an AP and NFA Associate.
85. As alleged above, KRA permitted millions of dollars in premiums derived from the Fuel Protection Program to flow through its bank account for over a year, without apparent inquiry or objection from Gallemore or others at KRA.
86. Gallemore asserted that Lintner unilaterally set up KRX without his knowledge and that he was unaware of KRX until mid-June 2021. Notwithstanding these claims, two freight companies Gallemore owns executed 11 of the Transaction Confirmations with KRX starting in November 2020 through March of 2021, and Gallemore himself signed at least one of the Transaction Confirmation in March of 2021.

87. In addition, claims by Gallemore and others associated with KRA and KRB that Lintner failed to engage in an adequate hedging strategy likewise reveals a lack of supervision, especially since Gallemore and others received regular copies of KRA's account statements from FCM 1 that showed the actual trading.
88. Gallemore also admitted to NFA examiners that he did not open or review the statements from FCM 1, which signifies the lack of supervision at the highest level of the companies.
89. By reason of the foregoing acts and omissions, KRA and KRB 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

Email: Docketing@nfa.futures.org

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

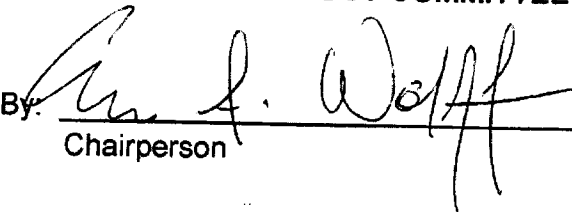
At the conclusion of the proceedings conducted in connection with the issuance of this Complaint, one or more of the following penalties may be imposed:

- (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 \$500,000 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. The Respondent in this matter who applies for registration in any new capacity may be denied registration based on the pendency of this proceeding.

**NATIONAL FUTURES ASSOCIATION
BUSINESS CONDUCT COMMITTEE**

Dated: 10/13/2021

By: 
Chairperson