

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

FILED  
JUN 13 2022  
NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING

In the Matter of: )

YAS CASTELLUM LLC )  
(NFA ID #534060), )

and )

MARCUS BRISCO )  
(NFA ID #534130), )

Respondents. )

NFA Case No. 22-BCC-008

**COMPLAINT**

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association (NFA) and having found reason to believe that NFA Requirements are being, have been or are about to be violated and that the matter should be adjudicated, NFA's Business Conduct Committee (Committee) issues this Complaint against Yas Castellum LLC (Yas) and Marcus Brisco (Brisco).

**ALLEGATIONS**

**JURISDICTION**

1. At all times relevant to this Complaint, Yas was a registered commodity pool operator (CPO) Member of NFA. As such, Yas was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.
2. From December 4, 2020 to May 4, 2022, Brisco was a registered associated person (AP) and listed principal of Yas, and an NFA Associate. As such, Brisco

was required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof. Yas is liable for violations of NFA Requirements committed by Brisco during his activities on behalf of Yas.

### **BACKGROUND**

3. Yas became a registered CPO and NFA Member on December 4, 2020 and an approved forex firm on March 29, 2022. The firm is located in Denver, Colorado.
4. In addition to being an AP and principal of Yas and an NFA Associate, Brisco became an approved forex AP on March 29, 2022.
5. Brisco withdrew his NFA membership, AP registration and principal statuses on May 4, 2022. Brisco has no other prior registration or membership history.
6. As alleged in more detail below, NFA commenced an examination of Yas in March 2022, which found that Yas and Brisco failed to operate Yas' commodity pool as an entity cognizable as a legal entity separate from Yas, accepted funds intended for investment in a commodity pool operated by Yas in a name other than that of the pool, and improperly commingled participant funds with other property.
7. Further, NFA found that Brisco and Yas' conduct in soliciting, accepting, and transferring pool participants' funds to an unregistered forex broker, as well as other actions, fell far short of the high standards of commercial honor and just and equitable principles of trade that NFA expects of its Members and Associates.
8. NFA also found that Yas and Brisco failed to cooperate fully with NFA's examination of the firm.

## APPLICABLE RULES

9. NFA Compliance Rule 2-13(a) provides, pertinent part, that any Member who violates any of Commodity Futures Trading Commission Regulations (CFTC) 4.1, 4.7, 4.12 and 4.16 through 4.41 shall be deemed to have violated an NFA Requirement.
10. CFTC Regulation 4.20(a)(1) provides, in pertinent part, that a CPO must operate its pool as an entity cognizable as a legal entity separate from that of the CPO. Subpart (b) of the Regulation further provides, in pertinent part, that all funds received by a CPO from an existing or prospective pool participant for the purchase of an interest in a pool that it operates must be received in the pool's name. Subpart (c) of the Regulation provides that no CPO may commingle the property of any pool that it operates or that it intends to operate with the property of any other person.
11. 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 and swaps activities.
12. NFA Compliance Rule 2-5 provides, in pertinent part, that each Member and Associate shall cooperate promptly and fully with NFA in any investigation, inquiry, audit, examination or proceeding regarding compliance with NFA requirements or any NFA disciplinary or arbitration proceeding.

## COUNT I

**VIOLATIONS OF NFA COMPLIANCE RULE 2-13: FAILURE TO COMPLY WITH CFTC REGULATION 4.20 BY FAILING TO OPERATE THE YAS POOL AS A SEPARATE LEGAL ENTITY, FAILING TO RECEIVE FUNDS IN THE NAME OF THE POOL, AND COMMINGLING POOL FUNDS WITH THE PROPERTY OF OTHER PERSONS.**

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13. The allegations contained in paragraphs 1 through 10 are realleged in paragraph 13.
14. Brisco submitted Yas' Annual Questionnaire (AQ) to NFA in November 2021.
15. Brisco indicated in the AQ that Yas was not engaged in any commodity interest activity but that the firm maintained NFA membership and CPO registration because its business operations involved a "CPO Entity that provides funded investments to a Forex Broker."
16. Since Brisco did not indicate in the AQ that Yas was conducting business in retail off-exchange foreign currency (forex), NFA contacted Brisco to follow-up regarding these inconsistencies.
17. In response, Brisco amended Yas' AQ on March 14, 2022, to indicate that the firm was engaged in forex activities.
18. On the same day, Brisco also listed the Yas Castellum Pool LP (Yas Pool or Pool) in NFA's online registration system (ORS). On March, 29, 2022, Brisco added the forex designation for himself and Yas in ORS.
19. Since it appeared that Yas—without being approved as a forex firm—was operating a pool without listing it in ORS or filing a disclosure document or any firm or pool exemptions with NFA, NFA commenced an examination of the firm on March 28, 2022.

20. Based on a review of Yas' records during the exam, NFA found that between April 2021 and March 2022, Yas accepted approximately \$487,000 from 47 individuals/entities (pool participants), including Brisco, for the purpose of being invested in a "private investment fund" to trade forex.
21. Yas accepted these participant funds into a bank account in the name of Yas—not the Pool—where Yas commingled participant funds with Yas' own operating capital.
22. Yas' bank statements showed that Brisco used funds from Yas' bank account for personal expenses he incurred at restaurants, breweries, fast food establishments, gas stations and clothing retailers.
23. Brisco told NFA that he ultimately deposited these pooled individual investments into a trading account in his own name maintained at an entity that appears to operate as an unregistered forex broker (forex broker).
24. The forex broker is apparently located in Saint Vincent and the Grenadines. The forex broker has never been registered as a futures commission merchant (FCM) or a retail foreign exchange dealer (RFED) and has never been an NFA Member.
25. Brisco failed to take any steps to form Yas Pool as a separate legal entity until April 6, 2022—after prompted to do so by NFA—when he submitted documents to register the Pool with the Colorado Secretary of State's Office.
26. Based on the allegations above, Yas failed to operate the Pool as a separate legal entity, failed to receive pool participant funds in the name of the Pool and, by pooling the participants' funds in Yas' bank account and allegedly depositing

these funds in a trading account in Brisco's name, Yas improperly commingled the Pool's funds with the property of others.

27. By reason of the foregoing acts and omissions, Yas is charged with violating NFA Compliance Rule 2-13 by failing to comply with CFTC Regulation 4.20.

## COUNT II

### **VIOLATIONS OF NFA COMPLIANCE RULES 2-4 AND 2-5: FAILURE TO OBSERVE THE HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE EXPECTED OF NFA MEMBERS AND ASSOCIATES AND FAILURE TO COOPERATE IN NFA'S EXAMINATION.**

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28. The allegations contained in paragraphs 1 through 12 and 14 through 26 are realleged in paragraph 28.
29. NFA's exam also revealed that Yas and Brisco showed little, if any, regard for protecting and safeguarding the investor funds they solicited and accepted and failed to cooperate with NFA during the exam of Yas.
30. Brisco and Yas' inequitable conduct towards pool participants included their failure to properly operate the Yas Pool according to regulatory requirements.
31. In addition, when NFA asked Brisco why he allegedly deposited the investor funds at a firm which was not an NFA Member or properly registered as an FCM or RFED, Brisco admitted he had done no due diligence regarding the forex broker and transferred funds to the forex broker based solely upon the recommendation of his brother-in-law (Individual A), who Brisco stated had "a personal connection" with the forex broker.

32. According to Brisco, when Yas received investor funds, he would contact Individual A via text message, and Individual A would respond by providing wire instructions to Brisco.
33. NFA reviewed these text messages and found that Individual A told Brisco to wire money to bank accounts in the names of at least three unrelated third parties, rather than a bank account in the name of the forex broker.
34. In one text message, Individual A told Brisco to make sure he did not include any words such as "investment/trading/hedge fund" in the memo line of the wire details.
35. Brisco could not explain to NFA why he transferred funds to unrelated third parties and told NFA he did not question any of Individual A's wiring instructions.
36. Brisco also apparently did not know (or would not identify) who or what entity exercised trading discretion over the participants' funds at the forex broker.
37. During the exam, Brisco initially represented to NFA that another NFA Member CPO/commodity trading advisor (Firm A), exercised trading discretion over the Yas Pool.
38. This representation was consistent with information in Yas' promotional material, email correspondence sent by Brisco to participants, and the terms in the customer agreements (Yas Agreement) between Yas and its 47 pool participants—all of which clearly represented that Firm A would exercise trading discretion on behalf of the Pool.

39. In addition, Yas and Brisco repeatedly and consistently communicated to pool participants from February 2021 through April 2022 that Firm A would exercise trading discretion over the Pool.
40. However, Brisco was not able to produce documents (*e.g.*, account opening paperwork or a written power of attorney) evidencing the relationship between Yas and Firm A when NFA requested those documents, and later claimed he was "mistaken" regarding Firm A's involvement.
41. Brisco then asserted that the money at the forex broker was traded by a "connection" of Individual A, whom Brisco would not identify.
42. Brisco also failed to question the exceptional rates of return (ROR) purportedly generated from the trading at the forex broker.
43. Brisco provided NFA with a trading statement allegedly from the forex broker that reflected a purported balance of about \$932,200 as of April 1, 2022.
44. Based on trading activity between April 1, 2021 and April 1, 2022, that purported balance of \$932,000 equated to an approximate ROR of 375%, net of significant fees.
45. As described under the terms of the Yas Agreement, the fees consisted of a 3% "deposit transaction fee" charged to participants, while all "profits" were subject to a commission rate of 50%—10% of which went to Yas on a weekly basis and 40% of which went to the person or entity that exercised trading discretion over the account.
46. Based on NFA's review of the forex broker trading statements Brisco provided, and a spreadsheet prepared by Brisco, approximately \$476,000 in fees was



assessed against the balance in the trading account between April 2021 and April 2022.

47. Of this total, about \$98,000 was paid to Brisco (as his share of commissions allegedly earned) and approximately \$383,000 was paid to another entity or individual that allegedly exercised discretion over the account.
48. During the exam, NFA informed Brisco that Yas could not continue to maintain pool participant funds at an unregistered forex broker.
49. On April 12, 2022, Brisco told NFA he had initiated a withdrawal of funds from the forex broker. At that time, the alleged trading statements reported a purported balance of approximately \$932,000.
50. After requesting the funds, Brisco represented that he received an automated message from the forex broker that indicated the firm's compliance process could take up to 48 hours to approve the withdrawal.
51. Despite this initial 48-hour timeline, over the next two weeks, Brisco provided NFA with multiple messages purportedly from the forex broker regarding delays in returning the funds to Yas.
52. On May 2, 2022—14 business days after the initial withdrawal request—Brisco notified NFA that Yas' bank account had received a \$526,730 wire. The following day, Brisco reported receipt of another wire in the amount of \$405,602. According to an email allegedly from the forex broker, it split the payment into two separate wires for "security" reasons.
53. Because of the unusual activity alleged above (e.g., instructions to wire investor monies to unrelated third parties, exceptionally high RORs, two-weeks for the

forex broker to process Yas' withdrawal request, receipt of the withdrawal in two separate wire transfers), NFA had serious concerns regarding the source of these funds and whether they actually were the proceeds from the participants' investments and legitimate returns.

54. Therefore, NFA instructed Brisco not to distribute any money to any pool participants until he and Yas provided NFA with a full accounting so NFA could review the proposed distribution schedule as well as the appropriateness of the commissions and fees.
55. NFA also required Brisco to provide documentation from Yas' bank that would identify the source of each wire deposit purportedly made on May 2 and 3 to confirm that the wires in fact originated from the forex broker and represented proceeds from the participants' investments.
56. In response, Brisco refused to provide any documentation from Yas' bank that would identify the source of the deposits it purportedly received. Further, despite NFA's directive not to distribute the funds, Brisco claimed he had a "fiduciary responsibility" to "urgently pursue" returning client funds.
57. On May 4, 2022, Brisco filed a Form 8T in NFA's ORS to withdraw his associate membership and his AP and principal statuses with Yas. His withdrawals became effective immediately.
58. Brisco also attempted to withdraw Yas' NFA membership at the same time, but NFA placed a "hold" on the firm's membership to prevent the withdrawal.

59. NFA obtained a copy of an email that Brisco sent on the same day to pool participants. The email indicated he had mailed their checks and stated they should, "Please cash these checks immediately upon reception."
60. NFA also contacted several pool participants who indicated they successfully received the proceeds from the checks from Yas.
61. Further, based on the information NFA received from those participants, as well as the accounting Brisco provided to NFA before he withdrew his membership, it appears that pool participants received amounts in excess of what each contributed.
62. To illustrate, the checks Brisco wrote to participants reflected investment gains that varied based on the timing and amount of a participant's investment in the Pool and equated to RORs ranging from about 3% to about 438%, net of fees, over the life of the investment for each respective pool participant.
63. Notwithstanding Yas and Brisco's failure to provide documentation from Yas' bank identifying the source of the wire deposits described in paragraph 52 above, NFA later learned that the two wire deposits into Yas' bank account did not originate from the forex broker and actually came from an entity which appears to operate as a cryptocurrency exchange based in Canada.
64. This, along with other prior suspicious activity alleged above, should have caused a reasonable person to question the legitimacy of the purported trading profits and delay returning funds to investors. However, Yas and Brisco disregarded this questionable activity and, contrary to NFA's directive, distributed the funds to investors anyway.

65. The above alleged conduct demonstrates that, at a minimum, Yas and Brisco had no regard for safeguarding the money they solicited from pool participants or for complying with NFA Requirements and potentially indicates that Yas and Brisco were involved in a fraudulent scheme in connection with operating the Yas Pool. Such conduct on the part of Yas and Brisco evidences a failure to uphold the high standards that NFA expects of its Members and Associates.
66. By their conduct and failure to cooperate, Yas and Brisco have prevented NFA from completing a full accounting to determine how much each pool participant was owed and reviewing the propriety of the approximate \$476,000 in commissions "earned" and charged against the pool participants' funds supposedly on deposit at the forex firm.
67. Additionally, because Yas and Brisco supposedly transferred the money to an unregistered forex broker, NFA has been unable to determine whether the funds were ever actually on deposit at the forex broker or the validity of the reported RORs.
68. Based on the foregoing acts and omissions, Yas and Brisco are charged with violating NFA Compliance Rules 2-4 and 2-5.

### **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 S. Riverside Plaza  
Suite 1800  
Chicago, Illinois 60606  
Attn: Legal Department – Docketing

E-Mail: [Docketing@nfa.futures.org](mailto: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 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 \$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.

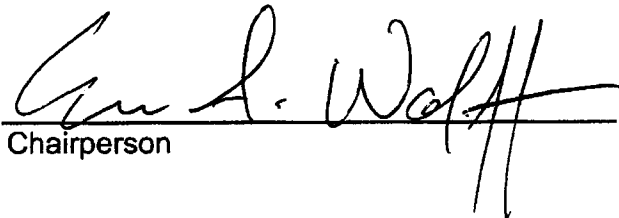
The allegations in this Complaint may constitute a statutory disqualification from registration under Section 8a(3)(M) of the Commodity Exchange Act. A respondent in this matter who applies for registration in any new capacity, including as

an AP with a new sponsor, may, after opportunity for hearing, be denied registration or conditionally registered 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 a Respondent who is an individual 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: 6/13/2022

By:   
Chairperson

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