

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

FILED
JUN 30 2022
NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of)
)
MAKOR SECURITIES LONDON LTD.)
(NFA ID #471275))
)
and) NFA Case No. 22-BCC-010
)
MICHAEL ALEXANDRE BENITAH)
(NFA ID #499718),)
)
Respondents.)

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 Makor Securities London Ltd. (Makor) and Michael Alexandre Benitah (Benitah).

ALLEGATIONS

JURISDICTION

1. At different times since July 13, 2017, Makor has been a Member of NFA. As such, Makor was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.

2. At different times since July 13, 2017, Benitah has been an NFA Associate. As such, Benitah was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof. Makor is liable for violations of NFA Requirements committed by Benitah during the course of his activities on behalf of the firm.

BACKGROUND

3. Makor is headquartered in London, United Kingdom (UK). The firm has been an NFA Member at different times since July 2017, with its most recent membership status starting in January 2020.
4. At different times during its membership, Makor was registered with the Commodity Futures Trading Commission (CFTC) as an independent introducing broker (IB) and approved as a swap firm. The firm withdrew its IB and swap firm statuses in April 2022.
5. Makor currently is provisionally registered with the CFTC as a swap dealer. The firm also is authorized and regulated by the UK's Financial Conduct Authority.
6. In addition to being an NFA Associate, Benitah was an associated person (AP) of Makor at different times from July 2017 to April 2022, when his AP status with Makor was withdrawn.
7. At all times relevant to this Complaint, Efraim Wolpert (Wolpert; also known as Evan Wolpert) has been a principal, the chief operating officer, and the chief financial officer of Makor.

8. Makor is affiliated with an IB Member located in New York, New York (hereafter referred to as Affiliate 1). Makor is also affiliated with a non-Member financial services company located in London, UK (hereafter referred to as Affiliate 2).
9. As alleged in more detail below, Makor has a history of falling below its minimum adjusted net capital (ANC) requirement by significant amounts and for extended periods.
10. In addition to its continued net capital deficiencies, Makor engaged in loan transfer activity with Affiliate 2 that Makor concealed from NFA, and which caused the firm to be undercapitalized for numerous periods from August 2, 2021 through February 14, 2022.

APPLICABLE RULES

11. NFA Financial Requirements Section 4 requires, in pertinent part, that any Member IB who violates any of CFTC Regulations 1.10, 1.12, 1.16, 1.17, 1.20 through 1.30, 5.6 or 5.7 (as applicable) is deemed to have violated an NFA Requirement.
12. NFA Financial Requirements Section 5(a) requires, in pertinent part, that a Member IB not operating pursuant to a guarantee agreement must maintain ANC (as defined in CFTC Regulation 1.17) equal to or in excess of the greatest of: a) \$45,000; b) for Member IBs with less than \$1,000,000 in ANC, \$6,000 per office operated by the IB (including the main office); or c) for Member IBs with less than \$1,000,000 in ANC, \$3,000 for each AP sponsored by the IB.

13. NFA Financial Requirements Section 5(c) requires a Member IB that is required to file any document with or give any notice to the CFTC under CFTC Regulations 1.10 [Financial reports of futures commission merchants and introducing brokers], 1.12 [Maintenance of minimum financial requirements by futures commission merchants and introducing brokers], 1.16 [Qualifications and reports of accountants], or 1.17 [Minimum financial requirements for futures commission merchants and introducing brokers] or is required to file any financial report or statement (e.g., FOCUS Reports) with any other securities or futures self-regulatory organization of which it is a member must also electronically file one copy of such document with NFA no later than the date such document or notice is due to be filed with or given to the CFTC or the self-regulatory organization.
14. CFTC Regulation 1.12 provides, in pertinent part, that an IB who knows or should have known that its ANC at any time is less than the minimum required under CFTC Regulation 1.17, must give notice immediately after the IB knows or should have known that its ANC is less than the minimum by filing such notice with NFA (on behalf of the CFTC).
15. CFTC Regulation 1.17 provides, in pertinent part, that any loan or other form of a receivable is excluded as a current asset from a registrant's net capital computation unless the receivable's value is secured by readily marketable, unencumbered collateral that can be converted promptly into cash and the collateral is in the possession or control of the registrant. The Regulation permits, in pertinent part, commission or fee receivables resulting from swap

transactions to be considered current as long as the receivables are not outstanding for more than a specific number of days from the month-end accrual date, provided they are billed promptly after the close of the month of their inception.

16. 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 and swaps business.
17. NFA Compliance Rule 2-9(a) requires each Member to diligently supervise its employees and agents in the conduct of their commodity futures activities for or on behalf of the Member.

COUNT I

VIOLATIONS OF NFA FINANCIAL REQUIREMENTS SECTIONS 4, 5(a) AND 5(c), AND NFA COMPLIANCE RULE 2-4: FAILURE TO MAINTAIN REQUIRED MINIMUM ANC, FAILURE TO FILE TIMELY NOTICE WITH NFA, AND FAILURE TO OBSERVE HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE.

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

Net Capital Deficiencies from July 2017 through January 2021

19. Under Financial Requirements Section 5(a), Makor was an IB Member required to maintain ANC equal to or in excess of \$45,000 at all times while the firm was registered as an IB.
20. After becoming an IB Member in July 2017, the firm's first financial filing with NFA consisted of a December 31, 2017 unaudited financial statement.
21. During the review of the financial statement, NFA questioned how the firm categorized certain assets as current.

22. Wolpert subsequently informed NFA that Makor had fallen below its \$45,000 net capital requirement as of December 31, 2017 and likely had been undercapitalized for several months prior to December.
23. Wolpert represented Makor was back in capital compliance at the end of February 2018, and the firm filed notice of the shortfall with NFA on March 28, 2018.
24. NFA commenced an examination of Makor in April 2018 (the 2018 exam), which confirmed the firm was undercapitalized intra-month and at month-end on multiple occasions since July 2017.
25. The 2018 exam found the shortfalls from July 2017 to February 2018 resulted from Makor treating substantially-aged receivables – some of which dated back 12 months from the reporting date – as current when the firm should have classified the receivables as non-current.
26. The amount of the shortfalls during this eight-month period ranged from approximately \$500,000 to more than \$1.3 million.
27. In addition, despite Wolpert reporting to NFA that Makor was in capital compliance as of February 28, 2018, the 2018 exam found the capital deficiencies continued until late April 2018, due to Makor reporting income to itself that should have been booked to Affiliate 1.
28. At the conclusion of the exam in August 2018, NFA issued a report, addressed to Benitah as the AP/principal of the firm, which cited Makor for these financial deficiencies.

29. In October 2018, Makor withdrew its NFA membership and IB registration statuses.
30. In January 2020, Makor became approved again as an IB Member. However, by the end of the year, Makor's net capital deficiencies had reoccurred.
31. Specifically, Makor's December 31, 2020 financial statement reported a receivable of approximately \$1.4 million from its parent company as a current asset.
32. However, Makor's parent company did not provide Makor with control of the cash collateral that Makor represented the parent company held to secure the receivable.
33. As a result, NFA and CFTC Requirements prohibited Makor from classifying the receivable as a current asset.
34. NFA required Makor to reclassify the receivable as non-current, which resulted in the firm falling under its net capital requirement as of December 31, 2020 by \$1.4 million.
35. This shortfall continued until January 26, 2021, when Makor received payment for the receivable from its parent.
36. Makor filed notice of the shortfall with NFA in early March 2021, at NFA's direction.
37. NFA cited Makor for the net capital deficiency in a May 2021 letter addressed to Benitah. NFA's letter also stated violations of NFA Requirements could subject Makor to disciplinary action under Part 3 of NFA's Compliance Rules.

Recent Net Capital Deficiencies

38. NFA commenced another exam of Makor in August 2021 (the 2021 exam).
39. As part of the 2021 exam, NFA reviewed the firm's net capital computation as of June 30, 2021 and found Makor had again misclassified a receivable from an affiliate as current.
40. The receivable causing the shortfall related to cryptocurrency (or crypto) assets that Affiliate 2 held in its wallet on Makor's behalf because Makor did not at the time have its own account or wallet in which to hold the crypto assets.
41. Even though Makor and Affiliate 2 had entered into a written custody agreement regarding the crypto, Makor could not count the crypto assets as current for net capital purposes since Affiliate 2 had not delivered readily marketable collateral to Makor to secure the crypto assets.
42. Accordingly, NFA required Makor to reclassify the receivable as non-current, which caused the firm to fall below its net capital requirement for the months ending February 28, April 30, and May 31, 2021, by amounts that ranged from about \$280,000 to almost \$2 million.
43. During the exam, Makor provided evidence to show the firm had opened its own crypto account. A monthly statement for the firm's crypto account showed an ending account value of more than £2.5 million as of July 31, 2021, and Makor appeared to be in capital compliance at that time.
44. Once again, NFA directed Makor to file notice of its undercapitalization with NFA, which the firm filed in December 2021.

45. NFA cited Makor for these financial deficiencies in a December 28, 2021 report addressed to Benitah. The report also indicated the violations could subject Makor to disciplinary action.
46. On January 12, 2022, Makor submitted a letter to NFA that Benitah signed, and which responded to the 2021 exam findings.

Improper Loan Transfer Activity

47. After NFA issued the exam report, NFA sent a confirmation to the crypto custodian where Makor held its account to verify certain information about the account as of July 31, 2021.
48. On January 26, 2022, the custodian replied to the request and provided NFA with an asset confirmation and a transaction history report of the account covering the period from July 27, 2021 through January 3, 2022.
49. In reviewing the confirmation and transaction history report, NFA noted that Makor possessed 50 Bitcoin (BTC) and approximately 600 Ether (ETH) in its wallet at the end of each month.
50. However, the transaction history report revealed that Makor engaged in consistent transfer activity every month from August 2021 to the beginning of January 2022.
51. According to the transaction history report, Makor withdrew the BTC and ETH out of its wallet on the first or second day of each month. Then, a day or two before the month ended, Makor deposited the BTC and ETH back into its wallet, apparently so Makor's month-end financial reports would reflect that the firm was in capital compliance.

52. The transaction history report did not identify by name to whom the crypto assets were transferred or received from, though NFA determined the transfers involved Affiliate 2.
53. NFA also determined the shortfalls ranged from approximately \$500,000 to \$3.6 million and occurred during the following periods:
- August 2 through August 28, 2021;
 - September 3 through September 28, 2021;
 - October 1 through October 30, 2021;
 - November 2 through November 29, 2021; and
 - December 2 through December 28, 2021.
54. NFA subsequently determined Makor was also undercapitalized from January 3 through January 30, 2022, and from February 2 to February 14, 2022, because of additional crypto loans transferred intra-monthly to Affiliate 2.
55. NFA contacted Makor about the transfer activity reported on the transaction history report and requested more information about the intra-month movements of the crypto.
56. In response, Makor explained the firm had an arrangement in place to loan its crypto assets to Affiliate 2 and provided a loan agreement dated August 1, 2021 that Wolpert signed on Affiliate 2's behalf. Yankel Hassan, another principal of Makor, signed the agreement on Makor's behalf.
57. According to the agreement, Makor wished to grant Affiliate 2 an unsecured, interest free loan of up to 50 BTC and 617 ETH for the sole purpose of funding Affiliate 2's working capital.

58. As alleged above, the 2021 exam found that Makor's improper treatment of the unsecured crypto receivable as a current asset caused the firm to fall below its net capital requirement for three months in early 2021 (*i.e.*, February, April, and May 31, 2021).
59. Despite NFA and Makor discussing the improper treatment of the unsecured crypto receivable as a current asset during the 2021 exam, firm personnel neglected to inform NFA at that time about the loan arrangement and the crypto transfers to Affiliate 2, which had commenced before NFA's exam started and continued throughout the exam.
60. Makor and Benitah also neglected to inform NFA in the January 12, 2022 response to the exam report about the firm's continued capital shortfalls resulting from the undisclosed ongoing intra-month loan transfers to Affiliate 2.
61. After discovering the intra-month loan transfer activity, NFA required Makor to explain the activity, including why the firm did not identify the intra-month loans as a net capital issue (considering NFA's prior discussions with the firm about the treatment of receivables as a current asset in computing its ANC) and why the firm did not bring the loan transfer activity to NFA's attention in the 2021 exam during the discussions about the unsecured crypto receivable.
62. In a March 21, 2022 response to NFA, Wolpert claimed Makor had thought the firm was in capital compliance based on month-end calculations and now understood the ongoing capital compliance obligation.
63. Contrary to this assertion, Makor has known for some time that the firm must be in capital compliance at all times, as evidenced by internal compliance manuals

NFA obtained during the 2018 and 2021 exams that each stated, "Makor must monitor for daily capital compliance..." (emphasis added).

64. Moreover, Makor should have known the firm had an ongoing capital compliance obligation from the prior shortfalls alleged above (*i.e.*, from July 2017 to April 2018 and from December 2020 to January 2021), which occurred intra-month as well as at month-end.
65. At NFA's direction, Wolpert, on Makor's behalf, filed notice with NFA in February 2022 of the firm's shortfall. Despite NFA's prior advice to Makor regarding the proper treatment of unsecured receivables under NFA and CFTC requirements, Wolpert reiterated in the notice Makor's view that the crypto assets belonged to Makor, were custodied for Makor by its affiliate pursuant to a custody agreement and, therefore, Makor was in capital compliance according to its calculations.
66. On April 20, 2022, NFA sent a letter to Makor, addressed to Benitah, which outlined the findings concerning the firm's undercapitalization and cited the firm for violating NFA Financial Requirements Sections 4 (for not promptly filing notice of the shortfalls) and 5 (for being undercapitalized).
67. As the foregoing discussion demonstrates, Makor repeatedly failed to comply with NFA and CFTC financial requirements through the firm's improper treatment of receivables (mainly unsecured receivables) as current assets and its failure to give timely notice of the capital shortfalls.
68. Further, by repeatedly ignoring NFA's advice on the proper treatment of unsecured receivables as a current asset for net capital purposes, Makor failed

- to observe the high standards of commercial honor and just and equitable principles of trade expected of NFA Members.
69. More significantly, Makor breached its obligation to observe high standards and equitable principles through the firm's deliberate and undisclosed course of conduct involving the intra-month loans to its affiliate.
 70. Those standards and principles, in part, prohibit a Member from engaging in financial transactions that are crafted to create a false impression that the Member is in compliance with its applicable minimum capital requirements at all times when the reality is that the Member is not in compliance with those requirements.
 71. As alleged above, Makor knew or should have known that the loan transfer activity with Affiliate 2 would cause Makor to be undercapitalized intra-monthly on numerous occasions between August 2021 and February 2022.
 72. Furthermore, the transfers between Makor and Affiliate 2, particularly those that occurred at the month end when Affiliate 2 returned the crypto to Makor, constitute a deliberate course of conduct by Makor to ignore NFA and CFTC financial requirements and create the false impression the firm was in capital compliance when it prepared its month-end financial reports.
 73. Moreover, Makor's failure to disclose the intra-month crypto loans in discussions with NFA about the firm improperly treating the unsecured crypto receivable as a current asset during the 2021 exam further suggests that Makor intended to conceal its undercapitalization and transfer activity from NFA.

74. Makor's inequitable conduct is also evidenced by the firm's March 2022 claim, as alleged in paragraph 62 above, that the firm only recently understood it had an ongoing capital compliance obligation, even though its own compliance manuals and other evidence contradict this assertion.
75. As an NFA Associate, Benitah breached his obligation to observe high standards of commercial honor and just and equitable principles of trade.
76. Since 2018, NFA has directed every exam report and letter about Makor's undercapitalization to Benitah, which put him on notice of the firm's obligation to comply with NFA and CFTC financial requirements and that continued violations of NFA and CFTC requirements could subject the firm to disciplinary action.
77. Although Benitah did not have daily responsibility over the firm's financials, he certainly knew of the firm's continuing net capital deficiencies.
78. In Makor's January 2022 letter responding to the 2021 exam report, Benitah indicated that Makor would continue to treat the crypto as current assets/inventory based on a December 15, 2021 letter from Makor's UK auditors.
79. However, Benitah knew or should have known when he signed the January 2022 exam response letter that Makor was regularly loaning the crypto assets to its affiliate and, as a result, the auditor's letter was inapplicable since Makor was not holding the crypto intra-monthly as inventory.
80. By reason of the foregoing acts and omissions, Makor is charged with violations of NFA Compliance Rule 2-4 and NFA Financial Requirements Sections 4, 5(a) and 5(c); and Benitah is charged with violations of NFA Compliance Rule 2-4.

COUNT II

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

81. The foregoing paragraphs are realleged as if fully stated herein.
82. The duty to adequately supervise employees and agents in the conduct of their commodity interest activities for or on behalf of the Member requires, in part, diligent oversight to ensure the Member maintains required capital, accurately reports its financial position in reports prepared for NFA and the CFTC, and observes just and equitable principles in complying with its regulatory obligations.
83. As alleged above, Makor was undercapitalized on numerous occasions since 2017, repeatedly ignored NFA's advice about the proper treatment of receivables as current assets, failed to notify NFA immediately after the firm knew or should have known of the capital shortfalls, and engaged in financial transactions crafted to create a false impression that the firm always complied with its applicable minimum capital requirements.
84. In addition, Makor allowed its employees to intentionally disregard NFA's advice regarding NFA and CFTC financial requirements and knowingly engage in conduct to obscure the firm's non-compliance with those financial requirements.
85. By reason of the foregoing acts and omissions, Makor is 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. 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.

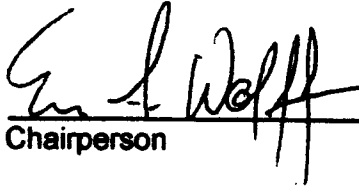
Pursuant to CFTC Regulation 1.63, penalties imposed in connection with this Complaint may temporarily or permanently render a Respondent who is an individual ineligible to serve on disciplinary committees, arbitration panels and governing boards of a self-regulatory organization, as that term is defined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

**NATIONAL FUTURES ASSOCIATION
BUSINESS CONDUCT COMMITTEE**

Dated:

6/30/2022

By:


Chairperson

m/cxc/Complaints/Makor et al Complaint