

NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE

FILED
AUG 29 2022
NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of:)

EMPIRE ENERGY GROUP LLC)
(NFA ID #458928))

and)

MARK STEPHEN FAIRCHILD)
(NFA ID #445404),)

Respondents.)

NFA Case No. 22-BCC-011

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 Empire Energy Group LLC (Empire Energy) and Mark Stephen Fairchild (Fairchild).

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, Empire Energy was registered with the Commodity Futures Trading Commission (CFTC) as an introducing broker (IB) and approved as an NFA Member. As such, Empire Energy 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, Fairchild was an associated person (AP) of Empire Energy and approved as an NFA Associate. As such, Fairchild was required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof. Empire Energy is liable for violations of NFA Requirements committed by Fairchild in the course of his activities on behalf of the firm.

BACKGROUND

3. Empire Energy has been an IB Member since September 2013. It is headquartered in Houston, TX.
4. The firm operates as an execution only IB, specializing in executing block futures trades in natural gas and crude products for institutional customers.
5. Fairchild is the president, managing member, and a principal of Empire Energy. He is also one of three registered APs at the firm.
6. Empire Energy and Fairchild have a history of failing to respond in a timely fashion to NFA requirements and requests. For example, Empire Energy applied for an extension to file its audited financial statement in 2021, but never responded to NFA's requests for additional information about the reasons for the extension. The firm also filed its unaudited financial statements for year-end 2019 and 2021 late.
7. Most recently, Empire Energy failed to file its December 31, 2021 audited annual financial statement (2021 audited financial statement), which was due by March 31, 2022.

8. Additionally, NFA commenced an examination of Empire Energy in January 2022, during which Fairchild and the firm were uncooperative and repeatedly failed to respond to exam requests in a timely manner.

APPLICABLE RULES

9. NFA Financial Requirements Section 5 requires each IB Member to file with NFA its audited financial statement no later than 90 days after the close of the IB's fiscal year, pursuant to CFTC Regulation 1.10.
10. CFTC Regulation 1.10, in pertinent part, allows an IB to request an extension of time to file its audited financial statement if it cannot meet the 90-day deadline without substantial undue hardship. The extension application must state the reasons for the extension request.
11. NFA Compliance Rule 2-5 requires NFA Members and Associates to cooperate promptly and fully with NFA in any NFA investigation, audit, or examination, among other proceedings.

COUNT I

VIOLATION OF NFA FINANCIAL REQUIREMENTS SECTION 5: FAILURE TO FILE AUDITED ANNUAL FINANCIAL STATEMENT.

12. The foregoing paragraphs are realleged as if fully stated herein.
13. Under NFA Financial Requirements Section 5, Empire Energy's 2021 audited financial statement was due on March 31, 2022.
14. On March 31, 2022, Fairchild submitted a request with NFA to extend the deadline to file the firm's 2021 audited financial statement. Thereafter, Fairchild filed three additional extension requests. None of the requests included reasons

why filing the 2021 audited financial statement by the deadline presented the firm with a substantial undue hardship.

15. In response to every extension request, and in several other instances, NFA attempted to contact Fairchild to obtain further information to determine if a substantial undue hardship existed for granting Empire Energy an extension.
16. Fairchild never responded to any of NFA's requests or otherwise demonstrated that filing the 2021 audited financial statement by the deadline would cause Empire Energy substantial undue hardship.
17. Since Fairchild did not demonstrate a substantial undue hardship existed, NFA denied the firm's extension requests on April 26, 2022.
18. As of the date of this Complaint, Empire Energy has failed to file its 2021 audited financial statement.
19. By reason of the foregoing acts and omissions, Empire Energy is charged with violation of NFA Financial Requirements Section 5.

COUNT II

VIOLATION OF NFA COMPLIANCE RULE 2-5: FAILURE TO COOPERATE.

20. The foregoing paragraphs are realleged as if fully stated herein.
21. Given Empire Energy's and Fairchild's prior history of failing to respond in a timely fashion to NFA requirements and requests, NFA provided them with clear deadlines for the 2021 exam, often supplementing the exam requests with written and telephonic reminders of upcoming deadlines.
22. Notwithstanding NFA's efforts, Fairchild and the firm repeatedly failed to respond to NFA in a timely fashion.

23. For example, in early December 2021, NFA provided Fairchild with a list of documents to be produced by December 22, 2021.
24. Empire Energy and Fairchild failed to produce the documents until January 4, 2022, after ignoring the initial deadline and a second deadline set by NFA and without explaining the reason for their late response.
25. NFA also emailed an information request to Fairchild on February 11, 2022, and directed that a response be submitted by February 16. However, Fairchild failed to respond to the request, even though NFA followed up with him by email and telephone several times and attempted to contact the firm's other APs and principal to request their assistance in getting Fairchild to respond to NFA.
26. Fairchild responded to the February 11, 2022 request on March 30, 2022, approximately six weeks after NFA's initial deadline.
27. During the examination, NFA also reminded Empire Energy and Fairchild in writing three times that their lack of cooperation violated NFA Compliance Rule 2-5. The last warning specified an April 13 deadline for outstanding exam requests, which Empire Energy and Fairchild did not meet until April 29, despite repeated reminders from NFA.
28. NFA concluded its examination and issued an exam report on June 7, 2022. The report noted certain violations of NFA Rules, with the failure to cooperate timely and fully as the main finding, and required a written response by June 22, 2022.
29. NFA sent Fairchild three reminders of the June 22, 2022 deadline and one follow-up reminder when he failed to respond to the exam report by that date.

30. As of the date of this Complaint, Empire Energy and Fairchild have not submitted a response to NFA's exam report.
31. By reason of the foregoing acts and omissions, Empire Energy and Fairchild are charged with violations of NFA Compliance Rule 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 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.

Dated: Eric A. Wolff

**NATIONAL FUTURES ASSOCIATION
BUSINESS CONDUCT COMMITTEE**
By: 8/29/2022
Chairperson