

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

FILED

DEC - 7 2022

NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING

In the Matter of

PERNIX CAPITAL, LLC  
(NFA ID #406176),

Respondent.

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NFA Case No. 22-BCC-016

**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 Pernix Capital, LLC (Pernix).

**ALLEGATIONS**

**JURISDICTION**

1. At all times relevant to this Complaint, Pernix has been a commodity pool operator (CPO) Member of NFA. As such, Pernix was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.

**BACKGROUND**

2. Pernix is located in Kearney, Nebraska and has been a CPO Member since January 2009.
3. Pernix currently operates one pool, Pernix Capital Fund LP (referred to hereafter as "Pernix Fund"). According to information from Pernix, Pernix Fund had

approximately 25 participants as of February 1, 2022 and a net asset value of slightly more than \$1 million as of June 30, 2022.

4. The firm previously operated another pool, New Era Fund LP (referred to hereafter as "New Era Fund"). Pernix reported to NFA in the Annual Questionnaire the firm filed in March 2022 that New Era Fund had ceased trading.
5. With limited exceptions, each CPO Member is required to file an audited annual financial statement (PFS) with NFA and distribute the PFS to pool participants within 90 calendar days after the end of the pool's fiscal year.
6. Each CPO Member that operates pools for which it has reporting obligations under Part 4 of the Commodity Futures Trading Commission (CFTC) Regulations must also file NFA Form PQR (PQR) on a quarterly basis with NFA for each pool that it operates.
7. Due to continuing problems with some firms filing their PQRs after the due date, NFA implemented a \$200 late fee for each business day that a PQR is filed after its due date, beginning with PQRs dated September 30, 2016.

#### **APPLICABLE RULES**

8. NFA Compliance Rule 2-13 provides, in pertinent part, that any Member who violates any of CFTC Regulations 4.1, 4.7, 4.12 and 4.16 through 4.41 shall be deemed to have violated an NFA Requirement.
9. CFTC Regulation 4.22(c) provides, in pertinent part, that each CPO must distribute an annual report to each participant in the pool that it operates and must file a copy of the report with NFA within 90 calendar days after the end of the pool's fiscal year.

10. NFA Compliance Rule 2-46 provides, in pertinent part, that each CPO Member must file NFA Form PQR on a quarterly basis with NFA for each pool the CPO Member operates and for which it has any reporting requirements under CFTC Regulation 4.27 within 60 days of each calendar quarter end. Prior to June 2021, the Rule specified that PQRs were due within 60 days of the quarters ending March, June, and September and within 90 days of the calendar year-end.

### **ALLEGATIONS**

#### **COUNT I**

#### **VIOLATIONS OF NFA COMPLIANCE RULES 2-13 AND 2-46: FAILURE TO TIMELY FILE QUARTERLY AND ANNUAL POOL REPORTS WITH NFA.**

11. The foregoing paragraphs are realleged as if fully stated herein.
12. Pernix has failed since 2019 to adhere to the filing deadlines for its PQRs and PFSs, as illustrated in the following table:

| <b>Statement Date</b> | <b>Filing Type</b> | <b>Due Date</b> | <b>Received Date</b> | <b>Number of Days Late</b> |
|-----------------------|--------------------|-----------------|----------------------|----------------------------|
| 12/31/2018            | PFS                | 04/01/2019      | 04/09/2019           | 8                          |
| 12/31/2019            | PFS                | 05/14/2020      | 06/08/2020           | 25                         |
| 12/31/2020            | PFS                | 03/31/2021      | 04/26/2021           | 26                         |
| 12/31/2020            | PQR                | 03/31/2021      | 04/06/2021           | 6                          |
| 03/31/2021            | PQR                | 06/01/2021      | 06/09/2021           | 8                          |
| 06/30/2021            | PQR                | 08/30/2021      | 08/31/2021           | 1                          |

13. In March 2020, the CFTC extended the deadlines for certain CPO filings in response to the COVID-19 pandemic. NFA provided similar relief to its CPO Members, including Pernix. As a result, the due date for Pernix to file its pools' December 31, 2019 PFSs was extended until May 14, 2020.
14. Despite this extension, Pernix filed the December 31, 2019 PFSs for Pernix Fund and New Era Fund 25 days late.

15. NFA also sent multiple e-mail reminders to Pernix advising the firm of the approaching due dates for the PFSs and PQRs. The PQR reminders also indicated that NFA would assess the firm with a \$200 late fee for each business day the PQR is filed after its due date.
16. For the three late PQR filings referenced in paragraph 12 above, NFA assessed Pernix late fees of \$2,000.
17. Because of Pernix's late PQR filings, NFA sent a letter to the firm in October 2021, notifying Pernix that filing late pool reports is a serious violation of NFA Rules, especially when it occurs repeatedly. NFA's letter requested Pernix explain in writing why the firm continued to file its pool reports late and the corrective action the firm would take to ensure future reports are filed on time. NFA's letter also warned Pernix that if the firm continued to file late pool reports, NFA's Compliance Department would recommend to this Committee that a formal and public disciplinary action be issued against Pernix for failing to comply with NFA's pool reporting requirements.
18. In response to NFA's letter, Pernix explained that its PQRs were late for various reasons but indicated the firm had taken steps to file future reports on time.
19. Despite these efforts, Pernix filed the June 30, 2022 PQR on August 31, 2022, two days after the filing deadline, and incurred a late fee of \$400.
20. By reason of the foregoing acts and omissions, Pernix is charged with violations of NFA Compliance Rules 2-13 and 2-46.

## **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](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 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.

**NATIONAL FUTURES ASSOCIATION  
BUSINESS CONDUCT COMMITTEE**

Dated: \_\_\_\_\_

12/7/2022

By: \_\_\_\_\_

*Michael L. Wolff*

Chairperson

m/cxc/Complaints/Pernix