

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

FILED

JUN 29 2023

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of

TRANSAMERICA ASSET
MANAGEMENT INC.
(NFA ID #449419),

and

QUYNH PHAM KEISER
(NFA ID #550489),

Respondents.

NFA Case No. 23-BCC-005

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 Transamerica Asset Management Inc. (Transamerica) and Quynh Pham Keiser (Keiser).

ALLEGATIONS

JURISDICTION

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

2. Keiser was granted a temporary license (TL) as an associated person (AP) of Transamerica and approved as an NFA Associate from July 27, 2022 through August 16, 2022. As such, Keiser was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.

BACKGROUND

3. Transamerica has been registered as a CPO and approved as an NFA Member since January 9, 2013 and approved as a Swap Firm since March 10, 2020. Transamerica is located in Denver, Colorado.
4. Transamerica operates approximately 110 exempt pools, which are primarily mutual funds and regulated investment companies. Transamerica's business model differs from a typical CPO in that firm personnel do not solicit funds or pool participants or engage in any customer solicitation. Instead, one of Transamerica's affiliated entities, which is a FINRA registered broker-dealer, offers the pools to third party broker-dealers, which may list the shares or otherwise market them to their clients.
5. From 2013 until 2019, Transamerica's Chief Compliance Officer (CCO) (Employee 1) was the sole associated person (AP) and a principal of Transamerica. In 2019, Employee 1's title became Deputy CCO, and Transamerica hired Francine Rosenberger (Rosenberger) to replace him as Transamerica's CCO.

6. From 2013 to July 2022, Employee 1 was also an NFA Associate. While Employee 1's title and job responsibilities changed in 2019, he remained the sole AP and a principal of Transamerica until he left the firm in July 2022.
7. Keiser joined Transamerica in 2017 as the firm's Director of Compliance Risk Management and reported initially to Employee 1. When Rosenberger replaced Employee 1 as CCO, Keiser began reporting directly to her until Keiser left Transamerica in October 2022.
8. On July 27, 2022, Transamerica filed a Form 8-R application (Form 8-R or application) with NFA for Keiser to become an AP and principal of Transamerica.
9. Keiser's 8-R application indicated she had taken and passed the Series 3 proficiency examination within the past two years, so NFA granted Keiser a TL as an AP of Transamerica and approved her as an NFA Associate, effective the same day. The TL allowed Keiser to act as an AP of Transamerica while NFA finished conducting required background checks on her and as Transamerica and she completed required steps for Keiser to become an AP.
10. Transamerica and/or Keiser needed to complete the required steps within 20 days after Transamerica filed the Form 8-R, or by August 16, 2022 (e.g., verifying the Form 8-R, submitting fingerprint cards, evidence from FINRA that she passed the Series 3 exam). If NFA did not receive any of these items by August 16, Keiser's TL would be withdrawn, her AP status would be set to pending, and she could not continue to engage in AP activities.
11. On July 28, 2022, Transamerica sent Keiser's Series 3 pass certificate to NFA, a certificate which NFA later learned was altered.

12. On August 15, 2022, Keiser also sent NFA a copy of the same altered certificate.
13. NFA initially did not know the Series 3 certificate had been altered. However, when the system NFA utilizes to verify Series 3 exam outcomes showed a "Fail" result for Keiser, NFA contacted FINRA for more information.
14. After NFA obtained the actual exam results from FINRA, it was apparent that Transamerica and Keiser had each provided an altered Series 3 certificate to NFA that reflected Keiser had passed the Series 3 exam when, in fact, she had failed the exam.
15. FINRA also informed NFA that this was Keiser's second attempt to pass the Series 3 exam, having failed to pass the exam for the first time in 2020.
16. This information prompted NFA to commence an investigation into the submission of the altered Series 3 certificates to determine who changed them and who was responsible for providing them to NFA, which investigation subsequently led to an examination of Transamerica in October 2022.
17. Through the investigation and examination, NFA found that Transamerica failed to implement an adequate supervisory structure to oversee the firm's CFTC registration and NFA membership obligations and that Keiser intentionally altered her Series 3 certificate and provided it to NFA.

APPLICABLE RULES

18. NFA Bylaw 301(a)(iv) requires that if any Member fails to have at least one principal that is registered as an "associated person" NFA shall deem that Member's failure to be a request to withdraw from NFA membership and shall notify that Member accordingly.

19. NFA Compliance Rule 2-2(f) provides, in pertinent part, that no Associate shall willfully submit materially false or misleading information to NFA or its agents.
20. NFA Compliance Rule 2-9(a) requires, in pertinent part, each CPO Member to diligently supervise its employees and agents in the conduct of their commodity interest activities for or on behalf of the Member.

COUNT I

VIOLATION OF NFA COMPLIANCE RULE 2-9(a): FAILURE TO DILIGENTLY SUPERVISE TRANSAMERICA'S OPERATIONS.

21. The foregoing paragraphs are realleged as if fully stated herein.
22. Under NFA Bylaw 301(a)(iv), Transamerica is required to have at least one principal who is registered as an AP (called an AP/principal).
23. Although Transamerica is aware of the requirements under Bylaw 301(a)(iv), the firm used deficient processes to identify individuals to fill the AP/principal role and to oversee its registration and membership obligations.
24. As part of the examination of Transamerica, NFA met with Rosenberger in October 2022. During this interview, Rosenberger explained that she was hired in 2019 to replace Employee 1 as CCO after Transamerica entered into a large regulatory settlement with the SEC.
25. Rosenberger explained that 13 employees report to her and that Transamerica has no employees that sell or solicit interests in the firm's pools. For this reason, according to Rosenberger, Transamerica only needs an AP to satisfy NFA's regulatory requirement, apparently referring to Bylaw 301(a)(iv), discussed above.

26. Rosenberg indicated that when she started working at Transamerica and Employee 1 was the sole AP, it was important to her for the firm to have two APs at all times to mitigate the risk of Transamerica losing its registration status.
27. Rosenberg admitted to NFA that she was not an AP of the firm because she could "never" pass the Series 3 exam, so she chose Keiser to be an AP of Transamerica.
28. Rosenberg represented that Keiser was an outstanding employee, a leader, and had a good work ethic. Rosenberg also found that Keiser was always good about "getting things done."
29. Rosenberg told NFA that she believed Keiser had passed the exam around August 2021 and was registered as an AP since then.
30. In February 2022, Rosenberg informed Transamerica employees that Employee 1 planned to retire at the end of June 2022.
31. In June 2022, Employee 1 informed Rosenberg that his retirement would be effective July 5, 2022. According to Rosenberg, when Employee 1's retirement was approaching in July 2022, she first realized that Transamerica did not have two APs, as she had desired and believed.
32. To apparently avoid having Transamerica's NFA membership status withdrawn, Rosenberg said that she instructed a Transamerica employee to begin working on Keiser's application to ensure Keiser was properly registered prior to Employee 1's departure.
33. In reviewing emails between Rosenberg and Keiser, NFA found that Keiser had previously sent Rosenberg an altered Series 3 pass certificate on August

- 2, 2021. This altered pass certificate seems to involve Keiser's initial attempt to pass the exam in 2020.
34. Transamerica did not file an application for Keiser to become an AP in 2021, so this certificate was never submitted to NFA.
 35. While Rosenberger admitted that she believed Keiser passed the Series 3 exam in 2021, Rosenberger said she had no recollection of ever receiving the first, altered certificate.
 36. Further, despite instructing Keiser to take the Series 3 and become an AP of Transamerica, Rosenberger apparently took no steps after Keiser told her in 2021 that she had passed the Series 3 exam to ensure Keiser completed other requirements to become approved as an AP of the firm (e.g., complete Form 8-R, submit fingerprints), which are outlined in the firm's compliance procedures that Transamerica employees are required to follow.
 37. As part of its examination NFA also obtained information about what had transpired from Keiser, through an explanation she submitted to NFA via email and later in an interview.
 38. In her email, Keiser explained that her job function as Director of Compliance Risk Management at Transamerica had no connection to NFA and that when Rosenberger asked her to become an AP, she declined since her job function did not require her to be an AP and such registration would add no value to her career. However, according to Keiser, Rosenberger's boss insisted that Keiser take the test.

39. Keiser represented the COVID pandemic allowed her to stall in taking the test and that she regularly told Rosenberger she needed to find another employee to be an AP.
40. Keiser explained that one week prior to Employee 1's final day at Transamerica, she attended a meeting to discuss NFA and CFTC items and Employee 1 explained that regulatory oversight would "fall on the shoulders of the person with the Series 3." Keiser recalls telling Employee 1 and Transamerica's Lead Compliance Analyst (Employee 2) that she was not going to participate in any oversight of a program she knew nothing about. But, nonetheless, Transamerica initiated a CFTC registration/NFA membership application for Keiser on July 27, 2022.
41. Although Rosenberger claimed to NFA that having a backup AP was a top priority for the firm since she joined Transamerica in 2019, she apparently selected one employee (*i.e.*, Keiser) who felt pressured to apply as the AP/principal and altered her Series 3 certificate when she could not pass the exam.
42. As indicated previously, Transamerica had 30 days from the withdrawal of Employee 1's AP/principal status on July 27, 2022 to have an AP/principal, which the firm attempted to do by having Keiser fill that role. However, NFA withdrew Keiser's TL on August 16 when Keiser did not satisfy the Series 3 requirement.
43. Shortly thereafter, Employee 2 became approved as Transamerica's sole AP and principal.

44. The ability to pass the Series 3 exam seems to have greater importance to the firm on who should be the AP/principal than other criteria.
45. For example, on multiple occasions during fieldwork, Rosenberger stated that Employee 2 was chosen to be the firm's sole AP/principal because the firm thought he was capable of passing the Series 3 exam.
46. However, in the organizational hierarchy of Transamerica's compliance department, four other individuals hold higher positions than Employee 2, including the CCO, Deputy Compliance Officer, and Director of Compliance to name a few.
47. Further, in his position as Lead Compliance Analyst, Employee 2 does not have the ability to control Transamerica's business activities, a title or position with Transamerica that requires principal status, or a 10% or more ownership in the firm. Therefore, he does not meet the criteria that requires an individual to be a principal under NFA and CFTC Requirements.
48. Additionally, NFA spoke to Employee 2 during the on-site examination, and he appeared only vaguely aware of Transamerica's NFA and CFTC regulatory obligations.
49. Transamerica also seems to believe the AP/principal role should be filled by someone from the firm's compliance area, which position the firm's prior CCO (*i.e.*, Employee 1) held for almost 10 years. However, rather than filling the AP/principal role when she became Transamerica's new CCO, Rosenberger selected more junior compliance employees as AP/principal, (neither of whom

met the requirements of a principal), apparently to avoid taking the Series 3 exam over concerns she would not pass the exam.

50. In Transamerica's March 23, 2023 response to NFA's exam report, the firm indicated that Rosenberger would be registering to take the Series 3 exam in order to become an AP of the firm. However, as of the date of this Complaint, Rosenberger has not registered for the exam or taken any other steps to become an AP of the firm.
51. Lastly, Transamerica failed to timely list Rosenberger and two other senior staff members, who have been with Transamerica since at least March 2022, as principals of the firm (*i.e.*, Head of Operations March 2022, Chief Investment Officer August 2014), which further illustrates the inadequate supervisory oversight over Transamerica's CFTC registration and NFA membership requirements.
52. By reason of the foregoing acts and omissions, Transamerica is charged with violating NFA Compliance Rule 2-9(a).

COUNT II

VIOLATION OF NFA COMPLIANCE RULE 2-2(f): WILLFULLY SUBMITTING MATERIALLY FALSE OR MISLEADING INFORMATION TO NFA OR ITS AGENTS.

53. The foregoing paragraphs are realleged as if fully stated herein.
54. In July and August 2022, NFA received altered Series 3 certificates in connection with Keiser's application for CFTC registration and NFA membership.

55. As previously mentioned, as part of its examination, NFA obtained information about what had transpired from Keiser regarding the Series 3 exam results. During NFA's interview of Keiser, she admitted that she had assistance using photoshop to change the "Fail" certificate to reflect that she had passed the Series 3 exam.
56. Keiser also admitted to sending the altered certificate to Transamerica and NFA and maintained that neither Rosenberger nor anyone else at Transamerica knew what she had done.
57. However, Keiser told NFA that the lack of supervision at Transamerica and the pressure Rosenberger placed on her to take and pass the Series 3 contributed to her feeling that her only option was to alter her certificate.
58. By reason of the foregoing acts and omissions, Keiser is charged with violating NFA Compliance Rule 2-2(f).

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
320 South Canal
Suite 2400
Chicago, Illinois 60606
Attn: Legal Department-Docketing

E-mail: 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:

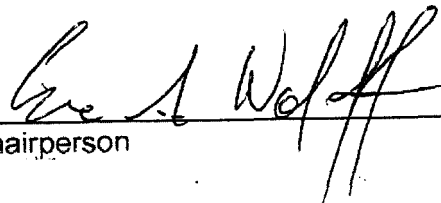
- (a) expulsion or suspension for a specified period from NFA membership;
- (b) bar or suspension for a specified period from association with an NFA Member;
- (c) censure or reprimand;
- (d) a monetary fine not to exceed \$500,000 for each violation found; and
- (e) order to cease and desist or any 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: 6/28/2023

By: 
Chairperson

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