

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

FILED

AUG 15 2023

NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING

In the Matter of)
)
BRAEMAR SECURITIES LTD) NFA Case No. 23-BCC-007
(NFA ID #448831),)
)
Respondent.)

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 issues this Complaint against Braemar Securities LTD (Braemar).

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, Braemar has been an introducing broker (IB) Member of NFA. As such, Braemar was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.

BACKGROUND

2. Braemar has been registered as an IB and NFA Member since January 2014. The firm is located in London, United Kingdom.
3. In 2019, Braemar merged with a non-Member, unregistered affiliate that brokered in Forward Freight Agreement (FFA) products. After the merger, Braemar's main

activities related to brokering block trades for both U.S. and non-U.S. institutional customers interested in trading Coal and FFA products on non-U.S. exchanges.

4. NFA commenced an examination of Braemar in May 2022, during which NFA found recordkeeping, supervisory, and other deficiencies.

APPLICABLE RULES

5. NFA Compliance Rule 2-10(a) requires NFA Members to maintain adequate books and records necessary and appropriate to conduct their business including, without limitation, the records required to be kept under CFTC Regulation 1.35 for the period required under CFTC Regulation 1.31.
6. CFTC Regulation 1.35, in pertinent part, requires IBs to keep full, complete, and systematic records of all transactions relating to its business of dealing in commodity interests. The Regulation also requires IBs generating over the preceding three years more than \$5 million in aggregate gross revenues from its activities as an IB to keep all written and oral communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a transaction in a commodity interest whether transmitted by telephone, voicemail, instant messaging, chat room, electronic mail, mobile device or other digital or electronic media.
7. CFTC Regulation 1.31, in pertinent part, requires certain IBs to keep oral pre-trade communications for a period of not less than one year from the date of the communication.

8. NFA Compliance Rule 2-26 provides that any Member or Associate who violates CFTC Regulation 155.4, among others, is deemed to have violated an NFA Requirement.
9. CFTC Regulation 155.4(b) provides, in pertinent part, that no IB or any of its affiliated persons shall disclose that an order of another person is being held by the IB or any of its affiliated persons, unless such disclosure is necessary to the effective execution of the order.
10. NFA Compliance Rule 2-9(a) requires NFA Members to diligently supervise their 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 2-10(a): FAILURE TO MAINTAIN ORAL COMMUNICATIONS.

11. The foregoing paragraphs are realleged as if fully stated herein.
12. Since at least May 2019, Braemar has generated over \$5 million in aggregate gross revenues from its activities as an IB over the preceding three years.
13. As a result, NFA Compliance Rule 2-10, which incorporates CFTC Regulations 1.35 and 1.31, obligates Braemar to make and keep all oral pre-trade communications for a period of one year from the date of communications.
14. Additionally, Braemar's written supervisory procedures (WSP) prohibit brokers from conducting any regulated transactions from a personal cell phone unless the call is recorded in accordance with CFTC Regulation 1.35(a).
15. At the onset of the exam, NFA obtained and reviewed Braemar's FFA desk trade activity for the period of January 1, 2022 through March 31, 2022.

16. While attempting to reconstruct trades, NFA found that Braemar failed to maintain pre-trade oral communications in accordance with regulatory requirements and firm WSPs due to its brokers' use of unrecorded personal cell phones.
17. Specifically, NFA obtained written pre-trade communications (e.g., chat messages) and two recorded phone calls for a FFA block trade brokered by Braemar brokers, Broker 1 (Broker 1) and Broker 2 (Broker 2), on February 17, 2022 that did not contain all relevant terms (e.g., pricing) related to the trade.
18. NFA raised the issue with the firm and the brokers and learned that Braemar was unable to provide support surrounding pricing and interest in the trade due to the conversation containing those details occurring on Broker 1's unrecorded personal cell phone.
19. Several days after meeting with NFA, Braemar reiterated that Broker 1 communicated with his customer on an unrecorded cell phone regarding the February 17 trade and elaborated that Broker 1 routinely communicated with this customer and several others on his unrecorded cell phone.
20. Upon learning of Broker 1's unrecorded cell phone use, NFA asked Braemar to determine how widespread cell phone usage was across all brokers and desks at the firm.
21. Braemar subsequently informed NFA that the FFA desk conducted approximately 25% of its trading activity over unrecorded personal cell phones, whereas the Coal desk did not conduct any business using personal cell phones.

22. By reasons of the foregoing acts and omissions, Braemar is charged with violations of NFA Compliance Rule 2-10(a).

COUNT II

VIOLATION OF NFA COMPLIANCE RULE 2-26: DISCLOSING CONFIDENTIAL CUSTOMER INFORMATION.

23. The foregoing paragraphs are realleged as if fully stated herein.
24. As alleged above, NFA Compliance Rule 2-26 incorporates CFTC Regulation 155.4(b), which prohibits IBs and affiliated persons from disclosing that an order of another person is being held by the IB unless such disclosure is necessary to the effective execution of the order.
25. Braemar's WSPs state that associated persons (APs) negotiating a block trade are prohibited from disclosing the details of any communications to any other party, including the counterparty of the block trade, unless with the written or recorded verbal permission of the customer.
26. On February 15, 2022, a Braemar broker disclosed the name of a customer bidding alongside another customer in response to the customer asking, "Who's bidding these capes."
27. On February 24, 2022, a discussion took place between a Braemar broker and a customer via instant message wherein the broker disclosed the name of the counterparty willing to sell the contract the customer intended to buy. Communications also showed the broker again disclosed the counterparty's name to his customer upon execution of the trade.

28. Braemar client agreements for the customers' whose names were given up during the negotiation process did not include authorization by the customers to disclose their name.
29. NFA questioned the firm about these name disclosures. In response, Braemar indicated that in each instance, the disclosure by its brokers was a breach of firm policy and averred that the brokers should not have disclosed the name of the counterparty.
30. Braemar also admitted its FFA desk communications were not included within the firm's monitoring system, which led to the firm's inability to uncover improper disclosure of confidential and non-public information.
31. By reason of the foregoing acts and omissions, Braemar is charged with violating NFA Compliance Rule 2-26.

COUNT III

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

32. The foregoing paragraphs are realleged as if fully stated herein.
33. NFA Compliance Rule 2-9(a) requires Braemar to diligently supervise its employees and agents in the conduct of their commodity interest activities for or on behalf of the firm.
34. As of at least 2014, Braemar has outsourced periodic supervision activities to a third-party compliance consultant (third-party consultant) employed to review the firm and report its analysis and any issues.
35. Prior to NFA's 2022 examination, the third-party consultant periodically sampled on a random basis, various communications of Braemar's Coal desk. When

appropriate, the third-party consultant generated reports that included reviews of broker voice communications related to Coal trade misreport reviews.

36. As alleged above, NFA found FFA desk brokers communicated with customers on unrecorded cell phones. As the FFA desk communications were not covered within the firm's monitoring system, Braemar also failed to ensure that brokers did not disclose confidential customer information without obtaining customer consent.
37. NFA's exam also found Braemar WSPs failed to adequately address what measures the firm used to review all AP oral communications and trading activity.
38. During the exam, NFA noted the periodic reviews of broker communications and trading activity were only being performed of the Coal desk—meaning the FFA desk had gone unsupervised since its integration after the merger in 2019.
39. When NFA inquired why the FFA desk was not incorporated into the existing supervisory framework, Braemar represented that after the FFA desk was acquired through the merger, the firm was unsure if the FFA business would fall under CFTC and NFA jurisdiction as Braemar is a non-U.S. IB with mostly non-U.S. customers and FFA trades are submitted for clearing on non-U.S. exchanges.
40. NFA's exam found that Braemar failed to confirm or inquire of the extent or existence of the firm's regulatory responsibilities or otherwise implement any regulatory oversight for its FFA desk.
41. Additionally, NFA found deficiencies with the supervision of the firm's registration obligations. For example, on January 24, 2022, Broker 2 brokered a trade

between two institutional customers, one of which was a U.S. customer, even though Broker 2 was not registered as an AP of the firm when the trade occurred.

42. Braemar acknowledged these supervisory problems upon learning the activities of its FFA desk fell under the regulatory oversight of NFA and the CFTC.
43. By reason of the foregoing acts and omissions, Braemar 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
320 South Canal Street
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:

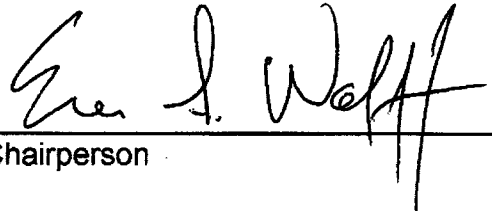
- (a) expulsion or suspension for a specified period from NFA membership;
- (b) bar or suspension for a specified period from association with an NFA Member;
- (c) censure or reprimand;
- (d) a monetary fine not to exceed \$500,000 for each violation found; and
- (e) order to cease and desist or any 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: 8/15/2023

By: 
Chairperson