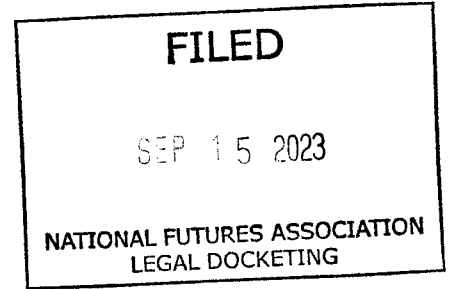


**BEFORE THE
NATIONAL FUTURES ASSOCIATION**



In the Matter of:)
)
BIT5IVE MINING FUND)
ADVISOR, LLC)
(NFA ID #543200),)
)
and)
)
RICHARD ALEXANDER ACOSTA)
(NFA ID #481065))

NFA Case No. 23-MRA-001

**NOTICE OF MEMBER RESPONSIBILITY ACTION AND ASSOCIATE
RESPONSIBILITY ACTION UNDER NFA COMPLIANCE RULE 3-15**

National Futures Association (NFA) hereby gives notice to Bit5ive Mining Fund Advisor, LLC (Bit5ive Advisor), a registered commodity pool operator (CPO) and NFA Member, and Richard Alexander Acosta (Acosta), an associated person (AP) and listed principal of Bit5ive Advisor and an NFA Associate, that, pursuant to NFA Compliance Rule 3-15, the President of NFA, with the concurrence of NFA's Executive Committee, has taken a Member Responsibility Action (MRA) against Bit5ive Advisor and an Associate Responsibility Action (ARA) against Acosta, whereby:

1. Effective immediately, Bit5ive Advisor and Acosta are hereby suspended from NFA membership and associate membership, respectively, until further notice;
2. Bit5ive Advisor, Acosta, and anyone acting on their behalf, including but not limited to Bit5ive Advisor's co-chief executive officers (CEOs), Robert Collazo (Collazo) and Claudio Izquierdo (Izquierdo), are prohibited from soliciting or accepting any funds for investment in Bit5ive Mining Fund LP (Bit5ive Fund or the Fund) or for any other pools or other investment vehicles over which Bit5ive Advisor or Acosta exercise control;
3. Bit5ive Advisor, Acosta, and anyone acting on their behalf are prohibited from disbursing or transferring any funds from accounts in the name of Bit5ive Advisor, Bit5ive Fund, or from the account of any other commodity pool or other investment vehicle operated by Bit5ive Advisor or Acosta, without prior approval from NFA; and
4. Bit5ive Advisor and Acosta are required to provide copies of this MRA/ARA by overnight courier or e-mail to all: a) customers of Bit5ive Advisor or participants in Bit5ive Fund; b) any investors in Bit5ive Advisor; and c) any banks or financial institutions that maintain accounts in the

name of Bit5ive Advisor, Bit5ive Fund, or Acosta or over which they and/or any of their employees or agents, including Collazo and Izquierdo, exercise control.

This action is effective immediately and deemed necessary to protect participants in Bit5ive Fund, the investing public, the derivatives markets, and other NFA Members since Bit5ive Advisor and Acosta have failed to cooperate fully during the course of NFA's attempted examination by failing to produce bank statements and other books, records and information that NFA has requested from them to determine, among other things, who invested in Bit5ive Fund; how much was invested and when; what Bit5ive Advisor and Acosta did with funds received from investors for investment in the Fund; whether Bit5ive Advisor and/or Acosta provided misleading information to NFA; and whether Bit5ive Advisor is in compliance with all NFA Requirements.

In support of these actions, NFA attaches the affidavit of Caroline Bukar, who is a Manager in NFA's Compliance Department, and based thereon alleges as follows:

1. Bit5ive Advisor has been registered with the Commodity Futures Trading Commission (CFTC) as a CPO and approved as an NFA Member since November 8, 2021. Bit5ive Advisor is located in Doral, Florida.
2. Acosta has been the sole registered AP and a principal of Bit5ive Advisor and an NFA Associate since November 8, 2021. NFA's Online Registration System (ORS) also lists Bit5ive Fund LLC as a principal and owner of the firm.
3. NFA obtained other information that identifies Collazo and Izquierdo as co-CEOs and/or directors of Bit5ive Advisor (e.g., a May 2021 post to the firm's website, a January 2022 SEC Form D, a May 2022 private placement memorandum for the Fund). However, neither of them is listed in ORS as a principal of the firm.
4. On July 1, 2022, Bit5ive Advisor listed Bit5ive Fund with NFA as a CFTC 4.7 exempt commodity pool. According to the private placement memorandum (PPM) and other information NFA reviewed, the Fund involved a "bitcoin mining" investment vehicle that provides both institutional and individual investors exposure to bitcoin mining activities via a regulated fund structure. The PPM also indicated the Fund may transact in bitcoin, as well as bitcoin futures and other over-the-counter and customized derivatives based on the value of cryptocurrency assets, primarily for hedging purposes.
5. NFA has been communicating with Bit5ive Advisor since at least March 2023 regarding the Fund's overdue certified December 31, 2022 pool financial statement (2022 PFS). Despite repeat reminders from NFA, Bit5ive Advisor has failed to file the Fund's 2022 PFS, which was due by March 31, 2023.

6. During a March 2023 telephone conversation with Acosta and another firm representative (Representative 1), Representative 1 informed NFA that the Fund received two subscriptions, which Acosta confirmed.
7. In March 2023, Representative 1 also identified the Fund's two subscriptions as being made by an individual (Investor A) and a couple.
8. In mid-July, NFA received an e-mail from Acosta that disclosed \$140,000 was redeemed out of the Fund back to an investor (Investor B). In an e-mail sent two days later, Acosta stated that no money was placed into a trading account, no trading had been done at all, and that all the money invested went into a bank account.
9. Since NFA still had not received the Fund's 2022 PFS, NFA sent e-mails to Acosta, instructing Bit5ive Advisor to provide account statements sent to the investors in the Bit5ive Fund and bank statements for the Fund since inception, among other records. NFA required the information to review how the Fund had used the subscriptions received from the two investors, whether the Fund had received any other subscriptions, and to confirm Acosta's representation that no trading had been conducted, among other things.
10. On August 22, Acosta informed NFA via email that no account statements had been provided to participants since the Fund "never actually launched." The next day, Acosta informed NFA that a couple never invested in the Fund and provided NFA with the name of Investor B.
11. On August 23, Acosta also sent an e-mail to NFA that included Bit5ive Fund's account statements from three banks. From the information provided to NFA, two of the Fund's accounts appeared to have closed, after remaining open for only a few months in 2022.
12. The statements for the third bank involved two accounts and covered July through December 2022. As of December 31, 2022, the balances in the two bank accounts, combined, totaled less than \$5,000. Further, Acosta and Bit5ive Advisor did not provide NFA with any of the Fund's bank statements for 2023, even though NFA had requested them.
13. The bank statements provided showed the Fund had received a \$140,000 deposit from Investor B on April 5, 2022 and a \$150,000 deposit from Investor A on May 4, 2022.
14. The statements also reflected a \$100,000 deposit that the Fund received on October 27, 2022 and a \$40,000 deposit received on December 19, 2022. Neither deposit appears to come from Bit5ive Advisor or a subscriber that Bit5ive Advisor had identified to NFA, and there was insufficient information for NFA to identify the source of the funds. In addition, the statements showed payments of \$100,000 and \$40,000 to

Investor B almost immediately after each deposit, which together appear to represent a full redemption of Investor B's investment.

15. Based on the bank statements provided to NFA, without the two deposits from the unidentifiable sources, the Fund did not have sufficient liquid assets available in its combined bank accounts to make the payments to Investor B.
16. Withdrawals from the bank accounts mainly consisted of frequent ACH transactions that seem to represent payments to at least six different consulting companies connected to individuals who are affiliated with Bit5ive Advisor (the Bit5ive Advisor Affiliates), including Collazo and Izquierdo.
17. Overall, of the \$290,000 that Bit5ive Fund received from Investor A and Investor B, the Fund paid more than half of that amount, or close to \$165,000, to the Bit5ive Advisor Affiliates, including more than \$65,000 paid to entities apparently related to Collazo and Izquierdo.
18. In the August 23 e-mail that accompanied the bank statements, Acosta said that Izquierdo and he had informed Investor A, the remaining Fund participant, that Bit5ive Fund would be shutting down and that Investor A would be able to redeem 100% of his investment after an audit of the Fund was completed.
19. Given that Bit5ive Advisor had not provided NFA with any bank statements after December 2022 to determine the Fund's current financial position and the bank statements provided showed the firm apparently had to obtain money from other unidentifiable sources in 2022 to repay Investor B, NFA commenced an emergency examination of the firm on August 28, 2023.
20. NFA staff went to the Bit5ive Advisor's Doral, Florida office address listed in ORS and was informed by an individual on the premises that a third-party currently used the space and had occupied it since approximately June 2023.
21. NFA then attempted to call Acosta at the telephone number listed in ORS for him, but reached another individual no longer related to the firm, who provided NFA with a working number for Acosta.
22. On August 28, 2023, NFA spoke with Acosta and scheduled an in-person meeting with him on August 29, 2023 at 9:00 a.m. After the call, NFA sent him an e-mail, which confirmed the meeting and attached a list of the documents and records that NFA required from the firm by August 31, 2023 (e.g., the Fund's monthly bank statements for 2023, the firm's monthly bank account statements).

23. Even though NFA has reminded Acosta of the obligation for Bit5ive Advisor and him to cooperate promptly and fully with NFA under Compliance Rule 2-5, Acosta did not make himself available for the August 29 meeting at 9:00 a.m. or at other times NFA later proposed (e.g., on August 30 at 10 a.m.)
24. Similarly, Acosta has failed to provide the documents and records that NFA required from Bit5ive Advisor, including another request NFA sent to him on August 29 for the Fund's bank records from January 1, 2023 to present and documentation showing the source of funds used to pay Investor B.
25. Instead, on August 30, 2023, Acosta sent an e-mail to NFA, which stated:

Thank you for your patience and professionalism in connection with your requests for documents and information relating to Bit5. I have done my best to this point to be responsive and provide documents and information to you as promptly as I was able to do so. However, at this time, I have decided that I will no longer respond to requests for documents or information. Accordingly, I will not be meeting with you tomorrow at 10 a.m. as you requested and, for the time being, will not agree to future meetings. I understand that my failure to do so may subject Bit5 and me to disciplinary action.
26. To date, Bit5ive Advisor and Acosta have failed to produce documents necessary for NFA to conduct its examination, including the 2022 PFS, the Fund's bank statements for 2023, and the firm's bank account statements, despite NFA's repeated requests for this information. Without these documents, NFA cannot ascertain exactly who invested in Bit5ive Fund; when and how much they invested; whether there are additional investors other than Investor A and Investor B; what Bit5ive Advisor and Acosta did with the funds received from investors for investment in the Fund; and the source of funds used to repay Investor B, among other things.
27. In addition, based on the firm and Acosta's abrupt decision not to cooperate two days after the exam started and information NFA has received, thus far, NFA has significant concerns about how Bit5ive Advisor used the subscriptions that Bit5ive Fund received from investors, whether there are sufficient funds available to redeem Investor A's \$150,000 investment in the Fund, and the activities of NFA's Member Bit5ive Advisor. It also appears that Bit5ive Advisor and/or Acosta have provided misleading information to NFA about the operations of the firm and the Fund.
28. Finally, based on Bit5ive Advisor and Acosta's failure to meet with NFA staff or to cooperate with NFA by providing requested documents and

information necessary for NFA to complete its examination, NFA is unable to determine whether Bit5ive Advisor and Acosta are currently in compliance with NFA Requirements.

The MRA and ARA will remain in effect until such time as Bit5ive Advisor and Acosta have demonstrated to the satisfaction of NFA that they are in complete compliance with all NFA Requirements.

Bit5ive Advisor and Acosta are entitled to a prompt hearing on this matter before NFA's Hearing Committee if it so requests. The request for a hearing shall be made in writing to:

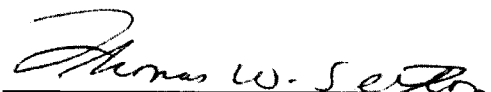
National Futures Association
320 South Canal Street
Suite 2400
Chicago, Illinois 60606
Attn: Legal Department-Docketing

E-Mail: Docketing@nfa.futures.org
Facsimile: 312-781-1672

Aggrieved parties may petition the CFTC for a stay of this MRA and ARA pending a hearing pursuant to and in conformity with the terms set forth in CFTC Regulation 171.41.

NATIONAL FUTURES ASSOCIATION

Date: September 15, 2023

By: 
Thomas W. Sexton, III, President

AFFIDAVIT

THE AFFIANT, CAROLINE BUKAR, BEING DULY SWORN AND UNDER OATH STATES THAT:

1. My name is Caroline Bukar, and I am employed by National Futures Association (NFA) as a Manager in NFA's Compliance Department and have been employed by NFA since June 2016. In my capacity as a Manager, I oversaw the examination of Bit5ive Mining Fund Advisor, LLC (Bit5ive Advisor), a registered commodity pool operator (CPO) and NFA Member, and Richard Alexander Acosta (Acosta), an associated person (AP) and listed principal of Bit5ive Advisor and an NFA Associate.
2. Bit5ive Advisor has been registered with the Commodity Futures Trading Commission (CFTC) as a CPO and approved as an NFA Member since November 8, 2021. Bit5ive Advisor is located in Doral, Florida.
3. Acosta has been the sole registered AP and a principal of Bit5ive Advisor and an NFA Associate since November 8, 2021. NFA's Online Registration System (ORS) also lists Bit5ive Fund LLC as a principal and owner of the firm.
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insufficient information for NFA to identify the source of the funds. In addition, the statements showed payments of \$100,000 and \$40,000 to Investor B almost immediately after each deposit, which together appear to represent a full redemption of Investor B's investment.

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25. Similarly, Acosta has failed to provide the documents and records that NFA required from Bit5ive Advisor, including another request NFA sent to him on August 29 for the Fund's bank records from January 1, 2023 to present and documentation showing the source of funds used to pay Investor B.
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Advisor. It also appears that Bit5ive Advisor and/or Acosta have provided misleading information to NFA about the operations of the firm and the Fund.

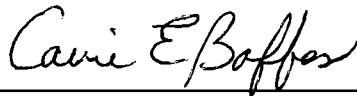
29. Finally, based on Bit5ive Advisor and Acosta's failure to meet with NFA staff or to cooperate with NFA by providing requested documents and information necessary for NFA to complete its examination, NFA is unable to determine whether Bit5ive Advisor and Acosta are currently in compliance with NFA Requirements.

Further Affiant sayeth naught.



Caroline Bukar

Subscribed and sworn to before me
on this 15th day of September 2023.



Notary Public

