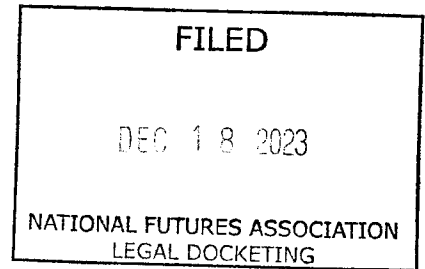


**NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE**



In the Matter of:

AC INVESTMENT MANAGEMENT LLC
(NFA ID #420066),

Respondent.

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NFA Case No. 23-BCC-011

COMPLAINT

Having reviewed the investigative report submitted by the Compliance Department of National Futures Association (NFA) and having 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 AC Investment Management LLC (AC Investment).

ALLEGATIONS

JURISDICTION

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

BACKGROUND

2. AC Investment has been a CPO Member since January 2013. The firm is located in New York, New York.
3. From January 2013 until November 2023, the founder of AC Investment was a principal and the firm's sole managing member (the Managing Principal).

4. The Managing Principal also was an owner and the managing member of Aurelian Holdings LLC (Aurelian Holdings), which is the sole member of AC Investment.
5. AC Investment operates eight commodity interest pools, which had over \$275 million in total net assets under management as of December 31, 2022.
6. AC Investment exercises investment management authority over several of the pools, including two pools discussed in this Complaint.
7. The first pool is Aurelian Plus LLC (Aurelian Plus). Aurelian Plus had a net asset value (NAV) of \$84 million as of December 31, 2022.
8. At all times relevant to this Complaint, the participants of Aurelian Plus included Aurelian Holdings, which is also the managing member of Aurelian Plus.
9. AC Investment invests the assets of Aurelian Plus mainly in hedge funds, including one that trades commodities, securities, and derivatives, while the pool's remaining assets are allocated to investments in private companies.
10. The second pool is AGR Master LP, which had a NAV of \$173 million as of December 31, 2022, and operates at times through business entities the pool fully owns (collectively, AGR Master).
11. AC Investment invests the assets of AGR Master directly and indirectly in securities, private investment companies, and managed futures.
12. As alleged in more detail below, AC Investment permitted Aurelian Plus to make a prohibited loan to an entity affiliated with the Managing Principal and failed to act at all times in the best interests of Aurelian Plus, AGR Master, and their participants involving loans and investments the firm entered into on the pools' behalf.

APPLICABLE RULES

13. NFA Compliance Rule 2-4 provides, in pertinent part, that NFA Members shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business.
14. NFA Compliance Rule 2-45 provides, in pertinent part, that no Member CPO may permit a commodity pool to use any means to make a direct or indirect loan or advance of pool assets to the CPO or any other affiliated person or entity.
15. NFA Interpretive Notice entitled, "Prohibition of Loans by Commodity Pools to CPOs and Related Entities," accompanies Rule 2-45 (Interpretive Notice). Among other things, the Interpretive Notice explains that NFA's Board of Directors (Board) adopted the Rule to address arrangements where CPOs and their principals directly or indirectly loaned or advanced pool assets to themselves or an affiliated person or entity, and the transactions resulted in losses of pool participants' funds since the CPOs, CPO principals, or the related entities did not have sufficient assets to repay the loans. The Interpretive Notice further states the Board determined that direct or indirect loans or advances from pools to their CPOs, the CPO's principals, or related entities are prohibited.

COUNT I

VIOLATION OF NFA COMPLIANCE RULE 2-45: PERMITTING AURELIAN PLUS TO MAKE AN IMPROPER LOAN TO AN ENTITY AFFILIATED WITH THE FIRM'S MANAGING PRINCIPAL.

16. The foregoing paragraphs are realleged as if fully stated herein.

17. Since at least 2013, AC Investment permitted pools it operates to make loans. Some of the loans violated NFA Compliance Rule 2-45 (Rule 2-45) since AC Investment permitted the pools to make them to entities affiliated with or related to AC Investment and/or the Managing Principal.
18. For example, in 2016 and 2017, AC Investment permitted Aurelian Plus to make three loans totaling \$700,000 to AC Scout LP (Scout), another pool operated by AC Investment (collectively, Loan #1).
19. In response to NFA's questions, AC Investment disclosed that Aurelian Holdings owned Aurelian Capital GP LLC (Aurelian Capital), the general partner of Scout, and that the Managing Principal was the managing member of Aurelian Capital and Aurelian Holdings.
20. Since the Managing Principal was an indirect owner of Aurelian Capital through Aurelian Holdings, he had an indirect ownership interest in Scout. This made Scout an affiliated entity of the Managing Principal.
21. Therefore, since the Managing Principal was a principal of AC Investment and had an indirect ownership interest in Scout, Rule 2-45 prohibited AC Investment from permitting Aurelian Plus to make Loan #1 to Scout.
22. Accordingly, NFA notified AC Investment in a September 2017 letter that the loans AC Investment permitted Aurelian Plus to make to Scout (*i.e.*, Loan #1) violated Rule 2-45.
23. NFA's September 2017 letter indicated Loan #1 represented a serious violation of NFA Rules, which could subject AC Investment to disciplinary action under Part 3 of NFA's Compliance Rules.

24. The September 2017 letter also advised AC Investment that the firm could petition NFA's Executive Committee for relief from complying with Rule 2-45 or develop a plan to repay Loan #1 to Aurelian Plus.
25. AC Investment did not petition the Executive Committee for relief. Loan # 1 was eventually repaid in October 2018.
26. On June 14, 2018, AC Investment permitted Aurelian Plus to make a \$400,000 loan (Loan #2) to Borrower A, a company that makes special effects and pyrotechnic displays for events. Loan #2 had a repayment date of December 31, 2018 and an interest rate of 4% per annum, which rate later increased to 7.5%.
27. AC Investment disclosed Loan #2 in pool quarterly reports (PQRs) the firm filed with NFA for Aurelian Plus.
28. NFA inquired with AC Investment several times about Loan #2 to ensure the loan did not violate Rule 2-45.
29. In response to those inquiries, AC Investment indicated Borrower A was not an affiliate of AC Investment or Aurelian Plus and represented that no AC Investment affiliate was a counterparty to Loan #2.
30. AC Investment also provided NFA with a copy of the loan agreement, which did not reveal that the firm, the Managing Principal, or other related parties (e.g., Aurelian Holdings) had any ownership interest in Borrower A.
31. AC Investment subsequently disclosed to NFA in September 2020 that the Managing Principal had directly owned 10% of Borrower A since 2015.
32. Even though NFA had informed AC Investment in September 2017 that the Managing Principal represented an "affiliated person" under Rule 2-45 based on his ownership interest in the borrower of a pool loan, AC Investment continued to

take the position that his ownership interest in Borrower A did not involve an "affiliated person."

33. However, Rule 2-45 prohibited AC Investment from permitting Aurelian Plus to make Loan #2 to Borrower A because the Managing Principal was a principal of AC Investment and had a direct ownership interest in Borrower A.
34. On December 16, 2020, NFA sent a letter to AC Investment notifying it that Loan #2 violated Rule 2-45, requesting support demonstrating the loan had been repaid by January 7, 2021, and warning that AC Investment may be subject to disciplinary action under Part 3 of NFA's Compliance Rules (December 2020 letter).
35. By reason of the foregoing acts and omissions, AC Investment is charged with violating NFA Compliance Rule 2-45 for permitting Aurelian Plus to make Loan #2 to Borrower A.

COUNT II

VIOLATIONS OF NFA COMPLIANCE RULE 2-4: FAILING TO UPHOLD HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE BY FAILING TO ACT IN THE BEST INTERESTS OF THE POOLS AND THEIR PARTICIPANTS.

36. The foregoing paragraphs are realleged as if fully stated herein.
37. NFA Compliance Rule 2-4 requires Members to observe high standards of commercial honor and just and equitable principles of trade, which includes the obligation for Members to act honestly, fairly and in the best interests of their customers at all times.

38. AC Investment, as a CPO, is required to act at all times in the best interests of the pools it operates, including Aurelian Plus and AGR Master, and their participants.
39. AC Investment affirms those duties in its Compliance Manual, which states that AC Investment and its employees "have a fiduciary duty to clients to act for the benefit of the clients..."
40. However, as alleged in more detail below, AC Investment disregarded its obligations under Compliance Rule 2-4 to the detriment of Aurelian Plus and AGR Master and their participants.

Aurelian Plus's Loans and Investments Involving Borrower A

41. AC Investment failed to act in the best interests of Aurelian Plus and its participants and adequately manage conflicts regarding loans and investments involving Borrower A.
42. As alleged above, NFA notified AC Investment in September 2017 that Rule 2-45 prohibited the firm from permitting Aurelian Plus to make Loan #1 to Scout based on the Managing Principal's indirect ownership in Scout.
43. AC Investment knew or should have known from NFA's September 2017 letter that the firm was prohibited from permitting Aurelian Plus to make Loan #2 to Borrower A because of the Managing Principal's direct ownership in the company.
44. Nevertheless, AC Investment failed to act in the best interest of Aurelian Plus by disregarding Rule 2-45 and permitting Aurelian Plus to make another prohibited loan, this time to a company in which the Managing Principal had a direct ownership interest (*i.e.*, Borrower A).

45. Prior to allowing the prohibited loan to Borrower A, AC Investment permitted Aurelian Plus to purchase shares of stock in Borrower A.
46. The transaction involved the Managing Principal assigning and transferring to Aurelian Plus his right to purchase 20 additional shares of Borrower A, which Aurelian Plus acquired for \$400,000 on January 1, 2017.
47. Additionally, in June 2020, Borrower A reorganized with its subsidiary, and the Managing Principal became a director, treasurer, and chief financial officer of the resulting company.
48. The Managing Principal's corporate roles at Borrower A, coupled with his ownership interest in the company, created a conflict of interest that AC Investment failed to manage adequately since the firm placed the interests of Borrower A ahead of Aurelian Plus and its participants.
49. To illustrate, AC Investment permitted Aurelian Plus to extend Loan #2's repayment date twice, from December 31, 2018 to December 31, 2019, and then again to December 31, 2020, because Borrower A was unable to pay off the loan's principal when due.
50. While Borrower A made interest payments in 2018 and 2019, it only made one principal payment of approximately \$200,000 in December 2019, at the end of the first extended repayment period.
51. The principal payment reduced the loan balance to roughly \$200,000. However, Borrower A never made principal or interest payments after December 2019.
52. Moreover, in July 2020, approximately one month after the Managing Principal assumed corporate roles at Borrower A, AC Investment permitted Aurelian Plus

to invest an additional \$150,000 in the company, for a total investment of \$550,000.

53. AC Investment permitted Aurelian Plus to make this additional investment even though Borrower A had made no principal or interest payments after December 2019.
54. NFA's December 2020 letter, described above in Count I, notified AC Investment that Aurelian Plus could not extend Loan #2 past the December 31, 2020 maturity date and requested support for its repayment by January 7, 2021.
55. In a January 6, 2021 response submitted on behalf of AC Investment, the Managing Principal indicated that he had exercised his authority and wrote-off the approximate \$200,000 balance of Loan #2.
56. In addition to writing off Loan #2, AC Investment wrote off Aurelian Plus's \$550,000 total investment in Borrower A.
57. NFA later learned the write-offs were effective as of December 31, 2020.
58. By writing off Aurelian Plus's loan and total investment in Borrower A, AC Investment solidified lending and investment losses for the pool. These actions benefitted Borrower A to the detriment of Aurelian Plus and its participants.
59. AC Investment did not attempt to recoup the pool's lending losses by, for example, declaring a default under the loan agreement and demanding immediate repayment in full.

AGR Master's Transactions Involving Borrower B

60. AC Investment also failed to act in the best interests of AGR Master and its participants regarding loans and investments the firm permitted the pool to make.

61. Starting in 2017, AC Investment permitted AGR Master to make a series of loans to a company (the Parent) and its two wholly-owned subsidiaries (the Subsidiaries), which produce and sell rigid inflatable boats (collectively, Borrower B).
62. AC Investment reported the loans in PQRs after the first loan was made in 2017.
63. NFA questioned the nature of the relationship between Borrower B, AC Investment, and the Managing Principal in 2017. Based on information AC Investment provided, NFA determined the loans to Borrower B did not appear to violate Rule 2-45.
64. However, as alleged below, AC Investment disregarded the obligations the firm owes to AGR Master and its participants under Rule 2-4 by not acting at all times in their best interests regarding the loans to, and other transactions involving, Borrower B.
65. Specifically, in April 2017, AGR Master acquired a 40% equity interest in the Parent for \$10. At the same time, the Parent and its Subsidiaries obtained a \$4 million line of credit from AGR Master and drew down the entire amount (Loan #3).
66. Loan #3 had a repayment date of June 1, 2018 and an interest rate of 10%. Collateral securing the loan included fixtures, equipment, inventory, and 100% of the equity interest of the Subsidiaries.
67. The Managing Principal also assumed a director position on the Parent's board of directors as part of the April 2017 transaction.
68. As of June 1, 2018, Borrower B had made no principal or interest payments on Loan #3. Even so, AC Investment permitted AGR Master to enter into an

agreement that extended the repayment date on Loan #3 until December 31, 2018.

69. Further, AC Investment permitted AGR Master to loan another \$500,000 to Borrower B (Loan #4) on July 9, 2018.
70. Loan #4 had a repayment date of December 31, 2018 and an interest rate of 10%. Collateral securing the loan included all personal and real property owned by the Parent.
71. As of December 31, 2018, Borrower B had made no principal or interest payments on either Loan #3 or Loan #4.
72. Even so, on January 1, 2019, AC Investment permitted AGR Master to extend the repayment date for both loans until December 31, 2019.
73. More significantly, AGR Master's 2018 audited pool financial statements (2018 PFS) revealed that AC Investment determined to value the pool's equity investment in the Parent at \$0 as of December 31, 2018, the day before the firm permitted AGR Master to extend the loans' repayment dates.
74. The failure of Borrower B to repay Loan #3 and Loan #4 suggests an inability or unwillingness to repay its debt. AC Investment's valuation of AGR Master's equity investment in the Parent at \$0, as reflected on the 2018 PFS, reinforces this view.
75. Nevertheless, AC Investment permitted AGR Master to lend another \$500,000 to Borrower B (Loan #5). This loan occurred in January 2019, shortly after AC Investment permitted AGR Master to extend the repayment of Loan #3 and Loan #4 and valued the pool's investment in the Parent at \$0.

76. Loan #5 had a repayment date of October 31, 2019 and an interest rate of 12%. Borrower B eventually paid off Loan #5 in September 2020, after AC Investment had extended the repayment date for almost a year.
77. In summary, AC Investment permitted Borrower B to extend the repayment of Loan #3 six times and extend the repayment of Loan #4 five times, without Borrower B ever making a principal or interest payment on them.
78. More recently, AC Investment again extended the repayment dates on Loan #3 and Loan #4 to December 31, 2023. The combined principal on the two loans totals \$4.5 million, which amount remains outstanding.
79. AC Investment also failed to act in the best interests of AGR Master and its participants with regard to interest payments on Loan #3 and Loan #4.
80. According to AGR Master's December 31, 2022 PFS, the accrued interest on Loan #3 and Loan #4 totaled over \$885,000.
81. In addition to the accrued interest, AC Investment decided to stop charging or accruing interest on the loans in July 2019.
82. NFA inquired about this decision. In response, the Managing Principal stated that AC Investment stopped accruing interest on the loans because AGR Master had an ownership interest in the Parent. AC Investment also explained that the loans, "had accrued sufficient interest relative to the total amount invested."
83. Despite these assertions, NFA estimates that AGR Master and its participants have lost over \$1.5 million in interest on Loan #3 and Loan #4 due to AC Investment's decision to stop accruing interest.
84. In total, AGR Master and its participants have relinquished over \$2.4 million in interest, as a result of AC Investment's handling of Loans #3 and #4.

85. Moreover, when Borrower B failed to repay Loans #3 and #4 by their repayment dates, or by any of the extended repayment dates thereafter, AC Investment did not declare the loans due and payable.
86. Likewise, AC Investment did not exercise AGR Master's security interest rights and foreclose on Borrower B's collateral.

Other Information

87. In May 2023, NFA asked for records that AC Investment relied upon when making decisions about the loans and transactions involving both Aurelian Plus and AGR Master.
88. The Managing Principal represented that AC Investment did not have due diligence records dating back to the original loans and investments as it was past the firm's five-year recordkeeping requirement, even though Loan #2, Loan #4, and Loan #5 and Aurelian Plus's investment in Borrower A all originated within that five-year period.
89. AC Investment provided financial records for Borrower B that showed net income losses of over \$970,000 and \$530,000 in 2018 and 2019, respectively, when AC Investment permitted AGR Master to modify Loan #3 twice and make Loan #4 and Loan #5.
90. AC Investment further provided NFA with three valuation reports of Borrower B conducted by a third-party valuation firm beginning in 2021.
91. Although AC Investment determined to value AGR Master's approximate 40% equity interest in Borrower B at \$0 since December 31, 2018, the valuation reports reflected a fair value of AGR Master's interest in Borrower B at \$785,000 at year-end 2020, \$970,000 at year-end 2021, and \$85,000 at year-end 2022.

92. The valuation reports also revealed that Borrower B's debt to total capital was 167.8% at year-end 2018, shortly before AC Investment permitted AGR Master to extend Loans #3 and #4, and to make Loan #5.
93. As alleged above, AC Investment permitted AGR Master to make loans to a company with a history of failing to repay them (*i.e.*, Loans #3 and #4). AC Investment also failed to enforce the loans' terms or otherwise seek repayment when Borrower B could not repay them and stopped accruing interest on the loans.
94. As a result, AC Investment has deprived AGR Master of almost \$7 million, consisting of more than \$4.5 million in outstanding principal and over \$2.4 million in lost interest.
95. As alleged above, the loans and investments that AC Investment entered into on behalf of Aurelian Plus and AGR Master predominantly furthered the interests of Borrower A and Borrower B, rather than the interests of the pools' and their participants.
96. By its conduct and actions, AC Investment has disregarded its obligation to act at all times in the best interests of Aurelian Plus and AGR Master and their participants.
97. By reason of the foregoing acts and omissions, AC Investment is charged with violations of NFA Compliance Rule 2-4.

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

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:

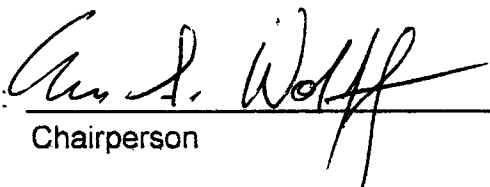
- (a) expulsion or suspension for a specified period from NFA membership;
- (b) bar or suspension for a specified period from association with an NFA Member;
- (c) censure or reprimand;
- (d) a monetary fine not to exceed \$500,000 for each violation found; and
- (e) order to cease and desist or any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

**NATIONAL FUTURES ASSOCIATION
BUSINESS CONDUCT COMMITTEE**

Dated: December 18, 2023

By: 
Chairperson

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