

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

FILED  
NOV 16 2023  
NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING

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

NFA Case No. 23-BCC-009

**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 Bit5ive Mining Fund Advisor, LLC (Bit5ive Advisor) and Richard Alexander Acosta (Acosta).

**ALLEGATIONS**

**JURISDICTION**

1. At all times relevant to this Complaint, Bit5ive Advisor was a registered commodity pool operator (CPO) Member of NFA. As such, Bit5ive Advisor was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.

2. At all times relevant to this Complaint, Acosta was an associated person (AP) and listed principal of Bit5ive Advisor, and an NFA Associate. As such, Acosta was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof. Bit5ive Advisor is liable for violations of NFA Requirements committed by Acosta during the course of his activities on behalf of Bit5ive Advisor.

### **BACKGROUND**

3. Bit5ive Advisor became a registered CPO and NFA Member on November 8, 2021. Bit5ive Advisor is located in Doral, Florida.
4. Acosta has been the sole registered AP and a principal of Bit5ive Advisor since November 8, 2021.
5. NFA's Online Registration System (ORS) also lists Bit5ive Fund LLC as a principal and owner of the firm.
6. According to a private placement memorandum (PPM) and other information NFA obtained, Robert Collazo (Collazo) and Claudio Izquierdo (Izquierdo) are co-CEO's and/or directors of Bit5ive Advisor. However, neither of them is listed in ORS as a principal of the firm.
7. On July 1, 2022, Bit5ive Advisor listed Bit5ive Mining Fund LP (Bit5ive Fund or the Fund) with NFA as a CFTC 4.7 exempt commodity pool. According to the 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.

8. As a CFTC 4.7 exempt commodity pool, the firm was required to file a pool quarterly report (PQR) as of September 30, 2022 (September 2022 PQR).
9. In November 2022, Bit5ive Advisor filed the September 2022 PQR with NFA and indicated the CPO had no assets under management. Additionally, the firm updated its Annual Questionnaire to indicate the pool had not received funds, securities or other property for the purchase of an interest in the pool.
10. As the firm did not file the December 31, 2022 PQR (December 2022 PQR) with NFA by March 1, 2023, NFA began contacting the firm in early March to discuss the firm's failure to file.
11. On March 10, 2023, Bit5ive Advisor filed the December 2022 PQR. In Part 1 of the December 2022 PQR, which requested information about the CPO, the firm indicated that Bit5ive Advisor operated one pool that did not have any assets under management. However, in Part 2 of the PQR, which requested information about the pools operated by the firm, Bit5ive Advisor reported the Fund, which was Bit5ive Advisor's only listed pool, had \$175,000 in net asset value.
12. During a telephone conversation that occurred the same day—but before Bit5ive Advisor filed the PQR—Acosta and another firm representative (Representative) also informed NFA that the Fund had received two subscriptions.
13. After the call, NFA sent e-mails to Acosta and Representative requesting additional information about the firm and pool's operations (*e.g.*, who were the

investors, when the pools commenced trading). Representative responded and identified the Fund's two subscriptions as being made by an individual (Investor 1) and a couple.

14. NFA continued to communicate with Bit5ive Advisor and request additional information from the firm given the conflicting information Bit5ive Advisor provided about the firm and Fund's operations.
15. NFA also informed Bit5ive Advisor that the firm needed to file the Fund's 2022 certified pool financial statement (PFS). Despite repeat reminders from NFA, Bit5ive Advisor has failed to file the Fund's 2022 PFS, which was due by March 31, 2023.
16. In mid-July 2023, NFA received an e-mail from Acosta that disclosed that \$140,000 was redeemed out of the Fund back to an investor (Investor 2). 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.
17. 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.

18. On August 22, Acosta informed NFA via e-mail 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 2.
19. On August 23, Acosta also sent an email 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.
20. 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 requested them.
21. The bank statements provided showed the Fund had received a \$140,000 deposit from Investor 2 on April 5, 2022 and a \$150,000 deposit from Investor 1 on May 4, 2022.
22. 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 but 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 2 almost immediately after each deposit, which together appear to represent a full redemption of Investor 2's investment.

23. 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 2.
24. Withdrawals in 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.
25. Overall, of the \$290,000 that Bit5ive Fund received from Investor 1 and Investor 2, 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.
26. In the August 23 e-mail that accompanied the bank statements, Acosta said that Izquierdo and he had informed Investor 1, the remaining Fund participant, that Bit5ive Fund would be shutting down and that Investor 1 would be able to redeem 100% of his investment after an audit of the Fund was completed.
27. Acosta's disclosures concerned NFA. Among other things, Bit5ive Advisor had not provided NFA with any bank statements after December 2022 to determine the Fund's current financial position. Further, the bank statements provided showed the firm apparently had to obtain money from other unidentifiable sources in 2022 to repay Investor 2. Therefore, NFA commenced an emergency examination of the firm on August 28, 2023.

28. 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.
29. 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.
30. 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 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).
31. Even though NFA 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.).
32. Similarly, Acosta 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 statements from January 1, 2023 to present and documentation showing the source of funds used to pay Investor 2.
33. 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.

34. 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 was unable to determine whether Bit5ive Advisor and Acosta were in compliance with NFA Requirements. For these reasons, NFA sought the issuance of a MRA against Bit5ive Advisor and an ARA against Acosta, which NFA's Executive Committee authorized on September 15, 2023.
35. To date, NFA has not heard from Bit5ive or Acosta in response to the MRA and ARA.

#### **APPLICABLE RULES**

36. NFA Compliance Rule 2-2(f) prohibits a Member or Associate from willfully submitting materially false or misleading information to NFA or its agents.
37. NFA Compliance Rule 2-5 requires, in pertinent part, that each Member and Associate shall cooperate promptly and fully with NFA in any investigation, inquiry, audit, examination or proceeding regarding compliance with NFA requirements or any NFA disciplinary or arbitration proceeding.
38. NFA Compliance Rule 2-13 provides, in pertinent part, that any Member who violates any CFTC Regulations 4.1, 4.7, 4.12, and 4.16 through 4.41 shall be deemed to have violated an NFA Requirement.
39. CFTC Regulation 4.22(c) provides, in pertinent part, that each CPO must distribute a certified annual report (pool financial statements) to each pool



participant and file a copy of the report with NFA within 90 calendar days after the end of the pool's fiscal year.

40. NFA Compliance Rule 2-46 provides, in pertinent part, that each CPO Member must file Form PQR on a quarterly basis with NFA for each pool that it operates and for which it has any reporting requirements under CFTC Regulation 4.27 within 60 days of each calendar quarter end.
41. NFA Registration Rule 208 provides, in pertinent part, that a CPO must file a Form 8-R for each individual who becomes a principal of the CPO within twenty days of the individual becoming a principal.

#### **COUNT I**

#### **VIOLATIONS OF NFA COMPLIANCE RULES 2-2(f) AND 2-5: WILLFULLY PROVIDING FALSE AND MISLEADING INFORMATION TO NFA; FAILING TO COOPERATE PROMPTLY AND FULLY WITH NFA**

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42. The allegations contained in paragraphs 1 through 37 are realleged as paragraph 42.
43. Since at least March 2023, Bit5ive Advisor and Acosta have failed to produce requested documents and information NFA needed to assess whether the firm was in compliance with NFA Requirements. Instead, they have provided NFA with incomplete and inconsistent information regarding the firm's operations, who invested in the Fund, how much has been invested in the Fund, and when those investments were made and, in some instances, they have failed to respond to NFA's requests.
44. Specifically, Bit5ive Advisor and/or Acosta have provided misleading information to NFA about the operations of the firm and the Fund. Despite the Bit5ive Fund receiving subscriptions in April and May 2022, the firm's October 2022 Annual

Questionnaire (submitted to NFA on November 22, 2022) stated the Fund had not received funds for the purchase of an interest in the pool.

45. Similarly, the September 2022 PQR (submitted to NFA on November 28, 2022) stated the CPO did not have any assets under management as of the September 30 reporting date.
46. Bit5ive and Acosta provided conflicting information about who invested in the Fund. For instance, in March, the firm informed NFA that the Fund had received two subscriptions—from Investor 1 and a couple. However, in mid-July, Acosta e-mailed NFA and disclosed that an investor—Investor 2—was redeemed out of the Fund, even though Bit5ive Advisor and Acosta had not previously informed NFA that Investor 2 was an investor in the Bit5ive Fund.
47. Additionally, Bit5ive and Acosta failed to cooperate with NFA. Specifically, Acosta failed to make himself available to meet with NFA staff on August 29 or August 30, 2023.
48. Bit5ive Advisor and Acosta also failed to provide to NFA requested documents and information necessary for NFA to complete its examination. For example, they failed to tender the Fund's monthly bank statements for 2023 or the firm's monthly bank account statements. NFA also requested Bit5ive Advisor and Acosta provide documentation to identify the source of funding for Investor 2's redemption, which they never provided to NFA.
49. Finally, on August 30, Acosta informed NFA that he would cease responding to NFA's document requests or agree to future meetings. Acosta acknowledged that his decision could subject both him and Bit5ive Advisor to disciplinary action.

50. By reasons of the foregoing acts and omissions, Bit5ive Advisor and Acosta are charged with violating NFA Compliance Rules 2-2(f) and 2-5.

### **COUNT II**

#### **VIOLATIONS OF NFA COMPLIANCE RULES 2-13 AND 2-46: FAILURE TO TIMELY REPORT PRINCIPALS, FAILURE TO FILE A POOL FINANCIAL STATEMENT; AND FAILURE TO TIMELY FILE POOL QUARTERLY REPORTS.**

51. The allegations contained in paragraphs 1, 3, 5, 7 through 11, 14, 15, 17, and 38 through 40 are realleged as paragraph 51.
52. As a pool operator with a listed pool, Bit5ive Advisor was required to file its December 2022 PQR with NFA by March 1, 2023. However, Bit5ive Advisor did not file its December 2022 PQR with NFA until March 10, 2023—nine days after the due date.
53. In addition, Bit5ive Advisor was required to file its December 31, 2022 PFS with NFA for the Fund by March 31, 2023, but it failed to do so.
54. By reason of the foregoing acts and omissions, Bit5ive Advisor is charged with violating NFA Compliance Rules 2-13 and 2-46.

### **COUNT III**

#### **VIOLATIONS OF NFA REGISTRATION RULE 208: FAILURE TO LIST TWO INDIVIDUAL AS PRINCIPALS.**

55. The allegations contained in paragraphs 1, 3, 5, 6, and 41 are realleged as paragraph 55.
56. As alleged above, a PPM and other information NFA obtained identified Collazo and Izquierdo as co-CEO's and/or directors of Bit5ive Advisor. However, neither of them is listed in ORS as a principal of the firm.

57. By reason of the foregoing acts and omissions, Bit5ive Advisor is charged with violating NFA Registration Rule 208.

### **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](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.

Pursuant to CFTC Regulation 1.63, penalties imposed in connection with this Complaint may temporarily or permanently render Respondents who are individuals 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: November 16, 2023

By:   
Chairperson