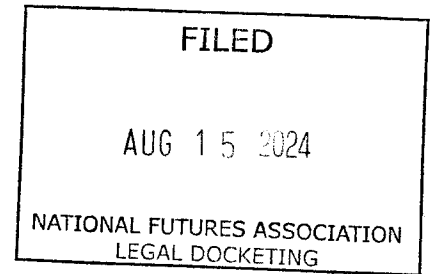


**NATIONAL FUTURES ASSOCIATION
BEFORE THE
BUSINESS CONDUCT COMMITTEE**



In the Matter of)
)
SCALEBUILDER LLC) NFA Case No. 24-BCC-009
(NFA ID #546464),)
)
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 Scalebuilder LLC (Scalebuilder).

ALLEGATIONS

JURISDICTION

1. At all times relevant to this Complaint, Scalebuilder was registered with the Commodity Futures Trading Commission (CFTC) as a commodity pool operator (CPO) and approved as an NFA Member. As such, Scalebuilder was and is required to comply with NFA Requirements and is subject to disciplinary proceedings for violations thereof.

BACKGROUND

2. Scalebuilder became a registered CPO and NFA Member on May 19, 2022. The firm lists its main address in NFA's online registration system (ORS) as Summit, New Jersey.

3. According to ORS, Switzerland-based Ayaltis Group AG (Ayaltis) has been reported as a holding company principal of Scalebuilder since May 2022.
4. ORS indicates that Brendan McCarty (McCarty), who also is an associated person (AP) of the firm and an NFA Associate, has been a principal of Scalebuilder since February 2024.
5. Ernesto Prado—who is also known as Ernesto Prado Cota (Prado)—and Gabriel Anastassiades (Anastassiades) are indirect owners of Scalebuilder through their ownership in Ayaltis and have been reported as principals since May 2024.
6. Robert Doeberl (Doeberl) has been reported as a principal since May 2022, but is not registered as an AP of the firm or an NFA Associate. According to ORS, Doeberl has not been an AP of any Member firm or an NFA Associate since 2009.
7. Jeffrey Spotts (Spotts) was employed by Scalebuilder as a "Strategic Advisor" at the time of NFA's November 2023 examination of Scalebuilder (November 2023 exam).
8. Prior to Ayaltis' purchase of Scalebuilder in 2022, Spotts was the managing member of Scalebuilder. After the sale, Spotts remained with Scalebuilder, pursuant to a July 2022 employment agreement that identified him as a "key employee" of the company.
9. Spotts has never been registered with the CFTC, approved as an NFA Associate, or reported as a principal of Scalebuilder.

10. Scalebuilder operates a CFTC 4.7 exempt commodity pool—Scalebuilder Allocation Format LP (Scalebuilder Fund or the Fund)—which the firm listed with NFA in July 2022. The Fund has traded securities since at least May 2021.
11. In November 2022, the Fund commenced futures trading. As of September 2023, Scalebuilder Fund had 11 participants and approximately \$41 million in net assets.
12. Scalebuilder predominately solicits money managers, some of which are CPOs and commodity trading advisors (CTAs), to become participants of Scalebuilder Fund.
13. In order to trade the pool, Scalebuilder requires certain money managers to invest in the Fund. In some cases, the investment is made in the name of the money manager, while in other cases the investment is made from a pool operated by the money manager.
14. Less than half of Scalebuilder Fund's participants are NFA Member CPOs and CTAs.
15. Scalebuilder also operates a CFTC 4.13(a)(3) exempt pool—Scalebuilder T8 Fund LP (T8 Fund). As of August 2023, T8 Fund had seven participants and invested approximately \$1.4 million into Scalebuilder Fund.

APPLICABLE RULES

16. NFA Bylaw 301(b) provides, in pertinent part, that no person may be associated with a Member of NFA unless the person is registered with NFA as an Associate or is an NFA Member.

17. NFA Registration Rule 208 requires, in pertinent part, that a CPO must file a Form 8-R for each individual who becomes a principal of the CPO within 20 days of the individual becoming a principal.
18. 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

**VIOLATIONS OF NFA BYLAW 301(b) AND NFA REGISTRATION RULE 208:
ALLOWING TWO UNREGISTERED INDIVIDUALS TO ACT AS ASSOCIATED
PERSONS WITHOUT BEING NFA ASSOCIATES AND FAILING TO TIMELY
REPORT INDIVIDUALS AS PRINCIPALS OF THE FIRM.**

19. The foregoing paragraphs are realleged as if fully stated herein.
20. Under NFA Bylaw 301(a), Scalebuilder is required to have at least one principal who is registered as an AP (called an AP/principal).
21. Starting on August 15, 2022, Scalebuilder operated without an individual registered as an AP/principal.
22. Doeberl attempted, but failed, to pass the Series 3 exam four times since August 2022. Therefore, Doeberl is prohibited from engaging in AP activities (*i.e.*, soliciting customers on the firm's behalf).
23. Since Scalebuilder did not have any registered APs, the firm was prohibited from soliciting participants to invest in the Fund from August 2022 until about February 2024, when McCarty joined the firm.
24. Prior to commencing the November 2023 exam, NFA learned that Scalebuilder Fund had been engaging in commodity interest activities for almost a year.

25. Therefore, NFA commenced the November 2023 exam of the firm to determine, among other things, who was soliciting participants to invest in the Fund since the firm had no APs.
26. NFA's review revealed that the firm permitted Doeberl and Spotts to engage in AP activities on its behalf without being APs and NFA Associates. This review also revealed that Scalebuilder failed to report all principals of the firm, including Spotts, despite his significant control over the firm's operations.

Doeberl

27. As part of the exam, NFA reviewed email messages between Doeberl and Spotts and noted that Doeberl was primarily responsible for finding prospective participants of the Fund and making first contact with them via email solicitations.
28. These emails introduced Scalebuilder, explained the Scalebuilder Fund strategy, and suggested the prospective participant schedule a phone call to discuss the Fund's strategy and potential investment opportunities.
29. After the initial solicitation email, Doeberl sent follow up emails to the prospective Fund participants, which again explained the Fund's strategy and invited the prospective participant to engage in further discussion.
30. Through these activities, Doeberl was soliciting participants to invest in the Fund, even though he was not a registered AP and NFA Associate.
31. Based on the foregoing, Scalebuilder permitted Doeberl to solicit prospective Fund participants without AP registration and NFA Associate status.
32. In addition, Doeberl engaged in other activities at Scalebuilder that required the firm to register him as an AP and NFA Associate.

33. Specifically, in February 2024, Scalebuilder hired McCarty as its Chief Risk Officer. McCarty is also responsible for all futures investments and soliciting customers on behalf of the firm, and reports directly to Doeberl.
34. Since Doeberl supervises McCarty, who solicits customers on behalf of the firm as an AP, Doeberl is also required to be a registered AP of Scalebuilder and an NFA Associate but is not.
35. Based on the foregoing, Scalebuilder also permits Doeberl to oversee McCarty, an AP of the firm, without Doeberl having AP registration and NFA Associate status.

Spotts

36. NFA's email review also revealed that Spotts solicited various prospective Scalebuilder Fund participants similarly to Doeberl.
37. In one email chain, Spotts responded to a prospective participant's LinkedIn inquiry. In the first email, Spotts introduced the participant to opportunities with Scalebuilder, explained Scalebuilder Fund's strategy and requested the prospective participant's daily performance and model portfolio. In subsequent emails, Spotts scheduled a follow up call to continue the conversation.
38. Given Spotts' solicitation of prospective Fund participants, Spotts should have been registered as an AP of Scalebuilder and an NFA Associate but was not.
39. Spotts also exercised a controlling influence over the firm's four employees and its activities and, therefore, Scalebuilder should have reported him as a principal of the firm but has not.

40. Specifically, Spotts' involvement extended into many areas of the organization, ranging from soliciting Fund participants to dealing with day-to-day operational issues.
41. Spotts reviewed and approved prospective Scalebuilder Fund participants prior to Doeberl emailing them.
42. For example, Doeberl emailed Spotts for approval of a list of prospective participants to contact and to review the draft solicitation email Doeberl intended to send to participants—which Spotts reviewed and incorporated edits into the body of the message. After he received Spotts' edits and approval of the list of prospects, Doeberl sent the solicitation email.
43. After his initial solicitations, Spotts negotiated the terms of the participants' investments into the Scalebuilder Fund, distributed account opening paperwork to participants, and set up trading accounts for Fund participants to trade within the Fund.
44. For example, in September and October 2022, Spotts solicited and negotiated the terms of participation in the Fund with a participant (Participant 1)—a former CPO Member that Spotts also engaged as a futures trading money manager.
45. During this time, Spotts did not include Doeberl on any communications with Participant 1. Once Participant 1 was ready to sign an agreement to participate in Scalebuilder Fund, Spotts directed Doeberl to sign the term sheet and return it to Spotts.
46. Spotts also exercised control of Scalebuilder and Scalebuilder Fund assets. For example, Spotts was a signatory on the firm's and the Fund's bank accounts,

paid invoices, and directed Doeberl in matters related to vendor payments. Doeberl also sent Spotts monthly invoices for payment of Doeberl's compensation.

47. Spotts also secured funding for the firm (and indirectly himself). In July 2022, after Ayaltis purchased Scalebuilder, Spotts negotiated a \$250,000 loan on behalf of Scalebuilder from an affiliate of Ayaltis.
48. The loan provided Spotts compensation and reimbursement for legal fees, as well as operating capital for Scalebuilder. Upon receiving the \$250,000, Scalebuilder immediately paid Spotts over \$100,000.
49. Additionally, Spotts was directly involved in day-to-day operations of the firm.
50. Spotts served as the primary point of contact between Scalebuilder and Ayaltis and handled employee issues (*i.e.*, determining employee compensation upon onboarding a new employee, dealing with paycheck discrepancies).

Other Unreported Principals

51. Ayaltis has been a principal of Scalebuilder since May 2022.
52. Prado and Anastassiades are indirect owners of Scalebuilder through their ownership in Ayaltis (47% and 14% owners of Ayaltis, respectively) and should have been reported as principals of Scalebuilder in 2022.
53. However, the firm did not report them as principals until May 2024.
54. By reason of the foregoing acts and omissions, Scalebuilder is charged with violating NFA Bylaw 301(b) and NFA Registration Rule 208.

COUNT II

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

56. The foregoing paragraphs are realleged as if fully stated herein.
57. Scalebuilder fell short of fulfilling its supervisory obligations to ensure the firm complied with NFA Requirements.
58. As alleged above, the firm allowed unregistered individuals to act as APs without being NFA Associates and failed to timely report all of its principals to NFA.
59. NFA's exam also identified other circumstances that demonstrate the firm's failure to adequately supervise its employees and operations.
60. As stated above, T8 Fund invested into Scalebuilder Fund starting in August 2023. Since T8 Fund indirectly traded futures, it became a commodity pool that the firm was required to list with NFA. However, Scalebuilder did not list the pool with NFA or file the 4.13 exemption until July 2024, after prompting from NFA.
61. In addition, the firm relied on Doeberl—an individual who repeatedly failed the Series 3 exam and who has not been an NFA Associate or AP since 2009—to ensure Scalebuilder fulfilled the firm's regulatory requirements.
62. However, Doeberl has demonstrated an inadequate understanding of the NFA reporting requirements applicable to Scalebuilder and, as a result, provided inconsistent information to NFA regarding Scalebuilder Fund's trading activities.
63. For example, in February 2023, Doeberl filed Scalebuilder's December 31, 2022 pool quarterly report (December 2022 PQR), which indicated that Scalebuilder did not have any funds under management allocated to futures trading.

64. However, NFA later reviewed Scalebuilder Fund's November and December 2022 statements from the futures commission merchant (FCM) where the Fund held an account (FCM A) and noticed Scalebuilder Fund began trading futures in November 2022 and had over \$2 million in active futures trading accounts as of December 2022.
65. Further, Doeberl is the individual from Scalebuilder who had signed the account opening documents with FCM A in September 2022 that indicated Scalebuilder's intention to trade futures and exchange-traded options.
66. Doeberl also did not know the source of the additions to the Fund. Specifically, NFA had questions after reviewing the March 31, 2023 PQR and asked Doeberl to explain the source of the funds deposited into the Fund and whether the funds were deposited by the CPO, a principal of the CPO, or an outside participant.
67. In an email response, Doeberl stated that Scalebuilder made allocations into the Fund from its own account and that all the funds "are internal." However, as of March 2023, Scalebuilder itself did not have any investment into the Scalebuilder Fund, and the Scalebuilder Fund had 10 total participants, eight of which were outside participants.
68. Scalebuilder's supervisory shortcomings are also reflected through its inadequate oversight of Spotts.
69. As alleged above, Spotts solicited funds for investment in Scalebuilder Fund and exercised control over Scalebuilder operations and employees. Yet, the firm failed to register him as an AP and NFA Associate or report him as a principal of the firm.

70. Scalebuilder's lax oversight of its operations and employees who hold key positions highlights the firm's significant supervisory shortcomings.
71. By reason of the foregoing acts and omissions, Scalebuilder is charged with violating 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

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

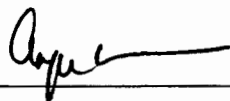
At the conclusion of the proceedings conducted in connection with the issuance of this Complaint, one or more of the following penalties may be imposed:

- (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: 08/15/2024

By:  _____
Chair