No. 19-__

IN THE

Supreme Court of the United States

LAWRENCE I. FÉJỌKWỤ,

Petitioners,

v.

COMMODITY FUTURES TRADING COMMISSION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

APPENDIX

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-2408

CHAZON QTA QUANTITATIVE TRADING ARTISTS, L.L.C., and LAWRENCE I. FEJOKWU,

Petitioners

v.

COMMODITY FUTURES TRADING COMMISSION

On Petition for Review from the Commodity Futures Trading Commission
(CFTC Docket No. CRAA 16-01)

Submitted under Third Circuit L.A.R. 34.1(a)
October 29, 2018

Before: CHAGARES, JORDAN, and VANASKIE, Circuit Judges.

(Filed: December 13, 2018)

OPINION[1]

CHAGARES, Circuit Judge.

[1] This disposition is not an opinion of the full Court and under I.O.P. 5.7 does not constitute binding precedent.

Lawrence Fejokwu and his company Chazon QTA Quantitative Trading Artists, L.L.C. ("Chazon") were permanently barred from membership in the National Futures Association (NFA) for failing to cooperate promptly and fully with an NFA investigation. They appealed to the Commodity Futures Trading Commission (CFTC), which upheld the NFA's finding and sanction. Now they petition this Court to review that decision under 7 U.S.C. § 21(i)(4). We will deny the petition.

I.

Because we write only for the parties, we recite just those facts necessary to our decision.

Fejokwu is the founder of two foundations, the Vision Foundations, that focus on pan-African socioeconomic development. In April 2011, Chazoneering, S.A., an entity solely owned and operated by Fejokwu, transferred $1.6 million to the Vision Foundations. The Vision Foundations used that money to fund the Maria Funds, a pair of commodity pools operated by Chazon. Fejokwu registered Chazon with the NFA as a commodities pool operator, with himself as its principal.

From the beginning, the Maria Funds suffered significant losses. The funds had only $125,000 remaining by March 2014.

At that point, Fejokwu applied to withdraw Chazon from the NFA to save costs. Fejokwu argued that he and Chazon were exempt from NFA registration under the so-called small-pool exemption, 17 C.F.R. § 4.13(a)(2). That exemption provides that a commodities pool operator need not register with the NFA if none of its pools has more than 15 participants and the total gross capitalization of all of its pools does

not exceed $400,000, excluding the operator's and principal's own money.

Fejokwu's withdrawal request triggered an NFA investigation. Fejokwu at first cooperated with the investigation, providing on request the Vision Foundations' organizational documents, balance sheets, and ledgers, the Maria Funds' 2013 bank statements, and Chazon's bank and broker statements. On further request, Fejokwu also provided the Maria Funds' and the Vision Foundations' bank statements from 2011.

The NFA then asked for Chazoneering's bank statements. Fejokwu balked at this request. He felt that he had already provided sufficient evidence that the small-pool exemption applied and that the NFA was not entitled to Chazoneering's documents since that entity was not an NFA member and did not trade futures. He ultimately provided the LLC agreement and 2013 and 2014 bank statements for Chazoneering, LLC — a different entity than the one that indirectly capitalized the Maria Funds.[2] But he refused to provide any Chazoneering bank statements from 2011, when the Vision Foundations were funded. He then added the Vision Foundations as listed principals of Chazon, which arguably made review of Chazoneering's bank statements unnecessary — because listing the Visions Foundations as Chazon principals made clear that all the Maria Funds' money came from Chazon principals. When the NFA still insisted, Fejokwu asked to discuss the request with NFA lawyers or supervisors. Rather than give him

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[2] In this opinion, we differentiate between the Chazoneering entities only when the distinction is relevant.

that opportunity, the NFA concluded its investigation with a finding that Fejokwu had failed to cooperate.

The NFA then filed a formal complaint charging Fejokwu and Chazon with violating NFA Compliance Rule 2-5. That rule requires each NFA member and associate to cooperate promptly and fully with the NFA in any NFA investigation, inquiry, audit, examination, or proceeding regarding compliance with NFA requirements or any NFA disciplinary or arbitration proceeding. Fejokwu and Chazon filed an answer, and the NFA held a hearing, at which Fejokwu and an NFA examiner testified.

The NFA hearing panel issued a decision finding that Fejokwu and Chazon had willfully violated Rule 2-5. The panel determined that the NFA legitimately requested Chazoneering's bank statements from the time it funded the Vision Foundations because the NFA questioned the ultimate source of Chazon's capital contributions and thus its eligibility for the small-pool exemption, among other reasons. The panel found that Fejokwu was "very vague" about where Chazoneering got the money and that he "actually appeared to be trying to deceive NFA" about the different Chazoneering entities, which raised issues about his credibility. Appendix ("App.") 39. "Moreover," the panel explained, "the sudden listing of the Vision Foundations . . . appeared to have been an attempt by Fejokwu to find a reason not to provide the Chazoneering statements," which "gave NFA legitimate concerns as to the funding of Chazoneering." App.40. Since the NFA's request for the Chazoneering bank statements was legitimate, the panel found that Fejokwu and Chazon willfully violated Rule 2-5 by refusing to provide them. As a

sanction, the panel permanently barred Fejokwu and Chazon from NFA membership.

Fejokwu and Chazon appealed to the NFA Appeals Committee, which upheld the panel's conclusion and declined to modify its sanction. On the sanction, the appeals committee emphasized the importance of member cooperation to the NFA's effectiveness. It also rejected Fejokwu's argument that the violations were not willful, finding them to be "a conscious decision" and pointing out that Fejokwu "knowingly misled" the examination team about the different Chazoneering entities. App.21–22. While there was no evidence that Fejokwu harmed customers or committed fraud, the committee explained, "that may simply be because the documents [Fejokwu and Chazon] refused to produce contained or led to such evidence." App.22. Given this "very grave violation" and the "significance of" Rule 2-5, the appeals committee found the sanction "completely appropriate." App.22.

Fejokwu and Chazon appealed this decision to the CFTC, which summarily affirmed. They then timely petitioned for review.

II.

The NFA and CFTC had jurisdiction over the underlying disciplinary proceeding under 7 U.S.C. § 21(b), (h). We have appellate jurisdiction to review the CFTC's order upholding the NFA's decision under 7 U.S.C. § 21(i)(4). We are satisfied that jurisdiction is proper in this Court rather than in the Court of Appeals for the Second Circuit despite Chazon's New York post-office box since the record suggests that Fejokwu carried out Chazon's business out of his home office in Guttenberg, New Jersey. See 7 U.S.C.

§§ 9(11)(B)(ii)(I), 21(i)(4). We are also satisfied — and the CFTC does not contest — that we have jurisdiction over the now-represented corporate appellant Chazon.

We review the factual determinations of an administrative agency "to determine whether there is substantial evidence to support [its] decision." Plummer v. Apfel, 186 F.3d 422, 427 (3d Cir. 1999). We review the agency's decision to uphold sanctions for abuse of discretion. See, e.g., Butz v. Glover Livestock Comm'n Co., Inc., 411 U.S. 182, 185–86 (1973).

III.

Fejokwu and Chazon argue that substantial evidence does not show that they willfully violated Rule 2-5 and that a permanent bar was unwarranted and unjustified.

We disagree.

A.

There is no dispute that Fejokwu and Chazon could have provided Chazoneering's 2011 bank statements but refused. Fejokwu instead argues that his refusal to cooperate did not violate Rule 2-5 because the NFA had no legitimate regulatory reason for requesting those statements. The NFA found that there was a legitimate regulatory need to confirm Chazon's eligibility for the small-pool exemption. We conclude that substantial evidence supported that finding.

Fejokwu relied on the small-pool exemption to withdraw from the NFA, giving it a legitimate reason to investigate Chazon's eligibility for this exemption. Since the exemption requires aggregate nonproprietary capital contributions to be under $400,000, the NFA had legitimate grounds to confirm

that Chazoneering's $1.6 million investment was in fact proprietary — that is, legitimate business income of Chazoneering (and thus of Fejokwu) and not merely customer contributions funneled through Chazoneering to invest in the Maria Funds without proper registration. Inquiring where Chazoneering got the $1.6 million was fair game. And Fejokwu gave the NFA reason to be suspicious of its source. He was cagey about the different Chazoneering entities, vague on Chazoneering's actual business, and protective of only the bank statements that showed where Chazoneering got these funds. The NFA thus legitimately insisted on reviewing Chazoneering's 2011 bank statements to confirm Chazon's eligibility for the small-pool exemption.[3] Fejokwu's refusal may not have been in bad faith, but no doubt it was voluntary and intentional — which makes it "willful" in the civil context. See, e.g., Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47, 57 & n.9 (2007); Vineland Fireworks Co. v. Bureau of Alcohol, Tobacco, Firearms & Explosives, 544 F.3d 509, 517 (3d Cir. 2008)

("[T]he legal definition of 'willful' . . . is '[v]oluntary and intentional, but not necessarily malicious.'" (quoting Black's Law Dictionary 1630 (8th ed. 2004)) (alteration in original)). Thus, substantial evidence

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[3] The NFA hearing panel also concluded that the NFA had legitimately asked for Chazoneering's 2011 bank statements to determine whether Chazon had any unlisted principals. Fejokwu argues that Chazoneering's bank statements would not show anyone's direct contributions to Chazon or direct or indirect ownership interests in Chazon, and so could not show unlisted principals. Since we conclude that confirming eligibility for the small-pool exemption was a legitimate regulatory reason to review the 2011 statements, we do not reach this alternative justification.

shows that Fejokwu and Chazon willfully violated Rule 2-5.

B.

Fejokwu also argues that the CFTC abused its discretion by upholding the NFA's permanent membership ban. We will overturn an agency's decision to uphold sanctions as an abuse of discretion only if the sanctions are "unwarranted in law or . . . without justification in fact." Butz, 411 U.S. at 185–86 (alteration in original). "Typically, such an abuse of discretion will involve either a sanction palpably disproportionate to the violation or a failure to support the sanction chosen with a meaningful statement of 'findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record.'" Reddy v. Commodity Futures Trading Comm'n, 191 F.3d 109, 124 (2d Cir. 1999) (quoting 5 U.S.C. § 557(c)(3)(A)).

Fejokwu first argues that a permanent ban was palpably disproportionate to the violation. In comparison to other cases, he argues, his would be "the only instance where the NFA has permanently banned a first-time offender for violating Rule 2-5 without any additional aggravating" circumstances. Fejokwu Br. 46. But, on the contrary, there were aggravating circumstances here. Fejokwu was not merely intransigent; the NFA found him deceptive, misleading, and intentionally vague. No doubt the sanction is severe, but given these circumstances we cannot say that it is unwarranted in law or without justification in fact. Thus the CFTC did not abuse its discretion by upholding it.

Fejokwu next argues that the CFTC's summary decision fails to provide a meaningful statement of the

reason for the sanction. We disagree. Both the NFA panel and appeals committee discussed the reasons for the sanction at some length. These decisions emphasized the importance of Rule 2-5, but also Fejokwu's misleading conduct in the investigation and hearing. The CFTC expressly adopted these findings and conclusions, and it also held that "the choice of sanction is neither excessive nor oppressive in light of the violation and the public interest." App.7. No doubt Fejokwu wishes that the NFA had credited other, mitigating factors, but he still received a meaningful statement of the findings, conclusions, and reasons underpinning the chosen sanction. We cannot conclude that the CFTC abused its discretion by adopting the NFA's reasons and upholding its sanction.

IV.

For these reasons, we will deny the petition for review.

UNITED STATES OF AMERICA

Before the

COMMODITY FUTURES TRADING COMMISSION

CHAZON QTA QUANTITATIVE TRADING ARTISTS, LLC
and
LAWRENCE I. FEJOKWU

v.

NATIONAL FUTURES ASSOCIATION

CFTC Docket No. CRAA 16-01

ORDER DENYING MOTION FOR RECONSIDERATION

On June 30, 2017, Lawrence Fejokwu filed a motion to reconsider the Commission's Summary Affirmance of a disciplinary action undertaken by the National Futures Association ("NFA") against Appellants for failure to provide NFA with certain requested documents during the course of its investigation, namely the 2011 bank statements of Chazoneering, an entity affiliated with Appellants.[4]

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[4] In affirming NFA's choice of sanction, the Commission adopted the rulings of NFA. *See* NFA Appeals Committee Decision (Nov. 23, 2015) and NFA Initial Decision (Feb. 27, 2015), available at https://www.nfa.futures.org/BasicNet/Case.aspx?entityid=0424320&case=14BCC00006&contrib=NFA.

The Commission rules relating to reviews of NFA decisions do not provide for motions for reconsideration. 17 C.F.R. Part 171. However, the Commission has previously said that such relief is available "in truly extraordinary circumstances." *Oshinsky* v. *NFA,* [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) 26,754, at 44,116, CFTC No. CRAA 95-1, 1996 WL 411123, at *1 (CFTC July 22, 1996). Such "extraordinary circumstances" include:

> a clear and convincing showing of fraud on the forum by an adverse party; (2) the discovery of previously unknown and non-discoverable evidence which would probably produce a different result; (3) a factual error in a jurisdictional ruling *(e.g.,* a respondent's registration status); or the type of egregious factual or legal error that goes to the heart of the challenged decision's validity.

Id. (quoting *Kohler v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,* [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) 23,437 at 33,173 (CFTC Dec. 30, 1986)). None of these circumstances are present here, and their absence compels denial of this Motion.

Fejokwu 's Motion for Reconsideration is therefore DENIED. IT IS SO ORDERED.

By the Commission (Acting Chairman GIANCARLO and Commissioner BOWEN.)

Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Dated: July 28, 2017

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

CHAZON QTA QUANTITATIVE TRADING ARTISTS, LLC
and
LAWRENCE I. FEJOKWU

v.

NATIONAL FUTURES ASSOCIATION

CFTC Docket No. CRAA 16-01

ORDER OF SUMMARY AFFIRMANCE

Upon review of the record and the parties' appellate submissions, we have determined that the findings and conclusions of the National Futures Association are supported by the weight of the evidence, and the choice of sanction is neither excessive nor oppressive in light of the violation and public interest; we therefore adopt them. We also find that none of the arguments on appeal present important questions of law or policy. Accordingly, we summarily affirm the decision of the National Futures Association without opinion.[5]

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[5] Pursuant to Commission Regulation I71.33(b), 17C.F.R. § I 71.33(b), neither the initial decision nor the Commission's order of summary affirmance shall serve as a Commission precedent in other proceedings.

IT IS SO ORDERED.

By the Commission (Acting Chairman GIANCARLO and Commissioner BOWEN.)

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Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: June 20, 2017

NATIONAL FUTURES ASSOCIATION
BEFORE
THE APPEALS COMMITTEE

In the Matter of:

CHAZON QTA QUANTITATIVE TRADING ARTISTS LLC
(NFA ID #424320),

and

LAWRENCE I. FEJOKWU (NFA ID #274264),

Appellants.

NFA Case No. 14-BCC-006

DECISION

A National Futures Association (NFA) Hearing Panel (Panel) issued a Decision to commodity pool operator (CPO) NFA Member Chazon QTA Quantitative Trading Artists LLC (Chazon) and Lawrence I. Fejokwu (Fejokwu) in the above-captioned matter (collectively, Respondents). The Panel found that Chazon and Fejokwu willfully violated NFA Compliance Rule 2-5 by refusing to provide NFA with bank statements of an entity that Fejokwu controlled. The Panel permanently barred Chazon and Fejokwu from NFA membership and from acting as a principal of an NFA Member and also permanently barred Fejokwu from association with an NFA Member.

PROCEDURAL BACKGROUND

On May 15, 2014, NFA's Business Conduct Committee issued a one- count Complaint against Chazon and Fejokwu. The Complaint charged that Chazon and Fejokwu violated NFA Compliance Rule 2-5 by failing to cooperate promptly and fully with NFA during the course of an examination of Chazon because they refused to provide bank records NFA requested in order to determine the source of funds used to capitalize Chazon and to fund the pools that Chazon operates and determine whether any other persons should be listed as principals of Chazon. On June 30, 2014, Chazon and Fejokwu filed an Answer denying the material allegations in the Complaint.

The Panel conducted a hearing on November 7, 2014. Chazon and Fejokwu were not represented by counsel.[6] Arthur Kenigstain, a Manager in NFA's Compliance Department, testified for NFA and Fejokwu testified on his and Chazon's behalf. A number of documents were also admitted into evidence.

The panel issued its decision on February 27, 2015. Chazon and Fejokwu filed notices of appeal with the Committee seeking review of both the finding of violations that the Panel made against them and the sanctions that it imposed for those violations.

Chazon and Fejokwu have made two requests and NFA has made one related request to this Committee that we resolve before considering the merits of the appeal. First, in their Notice of Appeal, Chazon and

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[6] Chazon and Fejokwu are represented by counsel in this appeal.

Fejokwu requested an opportunity to present oral argument. In our March 18, 2015 Order setting the briefing schedule, we stated that we would consider this request after reviewing the briefs. We now deny that request. The issues that are presented in this appeal are straightforward and the parties' briefs clearly present the issues involved. Oral argument by the parties would not materially assist this Committee in making its decision.

Second, after filing their initial brief and shortly before NFA's brief was due, Chazon and Fejokwu filed a motion to supplement the record with a document that was an attachment to an e-mail chain. The e-mail chain had been accepted into evidence by the Panel, but neither NFA nor Chazon nor Fejokwu sought to admit the attachment into evidence. NFA did not oppose this motion but requested leave to file a surreply brief to address any arguments that Chazon and Fejokwu made in their reply brief based upon this attachment should we grant the motion to supplement the record. Chazon and Fejokwu did not oppose NFA's request to file a surreply brief. Solely based upon the fact that all parties are in agreement, we grant both the motion to supplement the record and the request to file the surreply brief.[7]

II

DISCUSSION

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[7] Our ruling does not reflect in any way whether or not we would have granted the motion in the absence of unanimous agreement by the parties.

Chazon was a CPO Member of NFA and Fejokwu was a principal and associated person of Chazon and an NFA Associate Member during the period covered by the Complaint. Two foundations, Vision New Africa and Vision New Nigeria (collectively, the Vision Foundations), were also principals of Chazon.[8] Chazon operated two pools, the Maria Desatadora Nos Master Investment SA (Maria Master Fund) and the Maria Desatadora Umbrella Fund (Maria Umbrella Fund). The Maria Umbrella Fund acted as the feeder fund for the Maria Master Fund.

NFA commenced an examination of Chazon in March 2014 in response to Chazon's request to withdraw from registration as a CPO and from NFA Membership. The purpose of the examination was to ensure that Chazon qualified for the exemption from CPO registration it claimed in its request to withdraw from registration and membership; to examine the large amount of losses sustained by the fund in 2013; and to determine the reason why the required year-end certified audits of both pools were outstanding.

In response to NFA staff's questions, Fejokwu informed the examination team that the Vision Foundations were the only two participants that the pools had ever had and that the Foundations were set up for charitable purposes for his home country of Nigeria. Fejokwu also represented that the Vision Foundations were 100 percent endowed by him.

Subsequently, the examination team sent Fejokwu an e-mail with an initial list requesting certain documents pertaining to the Vision Foundations, Chazon, and the two pools. Fejokwu responded very

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[8] *See infra,* p 6.

promptly to the e-mail that same night and provided NFA with satisfactory responses to the specific document requests.

The examination team also sent a request for information to all NFA Member futures commission merchants (FCMs) and Forex Dealer Members instructing those firms to notify NFA if the firm currently or had ever carried any accounts in the name of Fejokwu, Chazon, the Vision Foundations, the pools, or other affiliated entities. NFA received responses from several FCMs, which confirmed the information Fejokwu had provided to NFA - that the pools had started with $1.6 million in 2011 and that their current value was approximately $125,000. After reviewing the monthly statements and speaking with Fejokwu, the examination team determined that the entire decline in assets was due to trading losses. No other funds were invested after the initial $1.6 million in 2011, and there were no redemptions by any third parties.

As part of Chazon's withdrawal request, Fejokwu claimed that Chazon qualified for an exemption from CPO registration for operating small pools,[9] which among other requirements is limited to a CPO that has received aggregate capital contributions for all

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[9] Commodity Futures Trading Commission (CFTC or Commission) Regulation 4.13(a)(a) exempts from CPO registration persons who operate one or more small pool(s) that has received less than $400,000 in aggregate capital contributions and that have no more than fifteen participants in any one pool. In determining whether the aggregate capital contributions exceed $400,000, proprietary funds (e.g., funds contributed by the pool, the pool's commodity trading advisor, principals and certain related family members) may be excluded.

its pools that do not exceed $400,000. Because the funds held by Chazon's pools initially exceeded the $400,000 threshold, Chazon would not qualify for the exemption unless all funds in excess of $400,000 were proprietary funds. NFA therefore requested the Vision Foundations' bank statements to determine their source of funding and the pools' bank statements to confirm that the pool funds had been received from the Vision Foundations. Fejokwu provided the requested information, including statements from Barclays, which appeared to show that both Vision Foundations were directly or indirectly funded by an entity, Chazoneering S.A., and confirmed that the $1.6 million coming into the pools in 2011 was from the Vision Foundations. Based upon this, the examination team concluded, albeit mistakenly, that Chazoneering LLC was the ultimate source of the $1.6 million invested in the pools.

Additionally, the team believed that Chazoneering LLC was a former CPO and NFA Member that had been owned and operated by Fejokwu from 2003 until it withdrew in 2005. Fejokwu told the team that Chazoneering LLC continued to operate as an LLC and was 100 percent owned by him.

This information caused the team to request the 2011 Chazoneering LLC bank statements to verify that Fejokwu had funded Chazoneering LLC 100 percent. This was necessary to determine if the funds initially held in Chazon's pools were in fact proprietary funds because if they were not, Chazon would not be eligible for the small pool exemption. Fejokwu refused to provide these documents despite the team's repeated requests, explanations and

admonishments that NFA Compliance Rule 2-5 required him to comply with the request.

Shortly thereafter, NFA learned for the first time from Fejokwu that the Vision Foundations were principals of Chazon. The team informed him that telling the team that the Vision Foundations were principals was not the same thing as listing them as principals in NFA's online registration system (ORS). On April 3, 2015, the Vision Foundations were listed as principals of Chazon in ORS. The team renewed its requests for the 2011 Chazoneering LLC bank statements and expanded the request to include statements from 2013 through the present to determine whether or not any other individuals indirectly contributed capital to Chazon through Chazoneering LLC's funding of the Vision Foundations. Again, Fejokwu refused to provide the statements and the Complaint followed.

At the hearing, Fejokwu testified that Chazoneering LLC was not the entity reflected in the Barclays records and that the entity was in fact Chazoneering S.A. Fejokwu further testified that when NFA staff asked for information and documentation related to "Chazoneering," he did not inform the team that there were two separate Chazoneering entities. He also testified that he was careful never to use the term "Chazoneering LLC" when responding to the team's questions. However, Fejokwu also testified that he had control over the bank records of Chazoneering S.A., although he was not certain that he could get copies of that entity's bank statements because the accounts are not very active. Finally, Fejokwu testified that it is "none of NFA's business" how Chazoneering S.A. earned its

money, but he did state that it was involved in trade finance.

The attachment that we have allowed to be added to the record consists of an e-mail chain (Attachment E-mail Chain) that was attached to a different e-mail contained in NFA's Exhibit 8 introduced into evidence at the hearing. However, NFA Exhibit 8 did not contain the Attachment E-mail Chain. One of the e-mails in the Attachment E-mail Chain is from Chris Alford at Barclays to Fejokwu and appears to contain a description of transactions in and between the Vision Foundations and Chazoneering S.A. accounts at Barclays.

A. Chazon and Fejokwu failed to promptly and fully cooperate with an NFA examination

1. Chazon and Fejokwu failed to provide the 2011 Chazoneering S.A. bank statements requested by NFA

Arthur Kenigstain, a member of the examination team, testified that Fejokwu did not provide the requested Chazoneering[10] bank statements, which testimony Fejokwu did not refute. Indeed, Fejokwu admits in paragraph 9 of his Answer to the Complaint that he did not provide the requested statements. Additionally, he also testified that he refused to provide the 2011 Chazoneering bank statements and

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[10] From this point forward, the use of the term "Chazoneering" refers to either Chazoneering LLC or Chazoneering S.A. unless the name of one of the specific Chazoneering entities is used.

that he sent an e-mail to the examination team stating that he was not going to provide the statements.

In fact, Fejokwu went to great lengths in his testimony to explain why he did not provide the bank statements. He testified that the requested bank statements would not prove what NFA wanted them for; that NFA did not need the statements; and that NFA had no right to obtain the Chazoneering bank statements. Similarly, in their brief, Chazon and Fejokwu state that the only documents that Fejokwu did not provide concerned Chazoneering, a non-NFA Member, and only after "NFA's requests became unreasonably burdensome, harassing, of no, or only remote theoretical relevance to the scope of NFA oversight. ..." (Respondents' Brief, p. 7).

In contrast to all of this evidence, Chazon and Fejokwu now assert that in response to Fejokwu's request for the Chazoneering bank statements, Barclays provided those statements "as in-line text in an e-mail at Barclay's choice." We reject the characterization of the information in the Attachment E-mail Chain as bank statements. At best, that information can be characterized as a description of transactions that occurred in two accounts held at Barclays. Moreover, the Attachment E-mail Chain is not the functional equivalent of a bank statement. For example, it is not clear from the document whether or not all of the transactions in the Chazoneering S.A. account are listed, as would be the case with a bank statement.

Finally, Chazon and Fejokwu's counsel asserts in their Reply Brief that the Attachment E-mail Chain evidences that all the deposits were between internal accounts at Barclays controlled by Fejokwu because

it contains the term "PBA", which appears in one of the transactions. According to Chazon and Fejokwu's counsel, "PBA" is commonly known to be "Personal Bank Account." However, an attorney's statement in a brief is not evidence, and therefore we cannot conclude that the Attachment E-mail Chain demonstrates that Chazon and Fejokwu, in effect, provided the information requested by NFA.

We therefore find that Chazon and Fejokwu failed to provide the 2011 Chazoneering S.A. bank statements that the NFA exam team requested.

2. Chazon and Fejokwu's failure to provide the requested records violated NFA Compliance Rule 2-5

In *Weinberg v. National Futures Association,* 1986 WL 66179 (CFTC June 6, 1986), the Member refused to provide his personal financial records, as opposed to the Member's financial records. The CFTC held that the Member violated NFA Compliance Rule 2-5 because NFA had a legitimate need for those records. *Weinberg v. National Futures Association,* 1986 WL 66179 at p. 2. Thus, if NFA had a legitimate need for the 2011 Chazoneering bank statements, the fact that they are not Chazon's records is of no consequence since Fejokwu controlled the entities to which the requested records belonged. The only issue is whether or not NFA had a legitimate need for these requested records.

NFA asserts two reasons for requesting the 2011 Chazoneering bank statements. First, Chazon and Fejokwu had filed a Form 7-W to request Chazon's withdrawal from registration and NFA membership claiming that Chazon was exempt from registration.

Chazon represented that it was exempt pursuant to CFTC Regulation 4.13(A)(2) and that "THE POOL'S ASSETS HAVE BEEN BELOW THE $400K THRESHOLD ALL YEAR. ...". (Respondents' Exhibit 7).

CFTC Regulation 4.13(a)(2) exempts from CPO registration persons who operate one or more small pool(s) that has received less than $400,000 in aggregate capital contributions and that have no more than 15 participants in any one pool. In determining whether the aggregate capital contributions exceed $400,000, proprietary funds (e.g., funds contributed by the pool operator, the pool's commodity trading advisor, principals and certain related family members) may be excluded.

The capital contributions to the pools that Chazon operated amounted to approximately $1.6 million. Consequently, to be eligible for the 4.13(a)(2) exemption, no more than $400,000 could have been contributed by outside investors, or said another way, Chazon and its principals (or certain relatives not involved in this matter) had to have contributed about $1.2 million, i.e., proprietary funds. NFA sought to confirm that this was the case and requested records in order to do so. Records that Chazon and Fejokwu did provide showed that the Vision Foundations contributed all of the pools' capital and that a substantial amount of that money came from Chazoneering. However, without records that showed the source of the Chazoneering funds, the team was unable to determine whether or not Chazoneering funds came from Chazon or its principals and therefore resolve the question of whether or not the pools were funded with proprietary funds. Consequently, the team requested

Chazon and Fejokwu to produce the 2011 Chazoneering bank statements, which it refused to do.

Second, during the examination, Fejukwo advised the exam team that the Vision Foundations were principals of Chazon, and the team advised him that telling them that the Vision Foundations were principals of Chazon and listing them as principals of Chazon in NFA's ORS were not the same thing.[11] Chazon subsequently disclosed the Vision Foundations as principals of Chazon in ORS. However, individuals who indirectly contribute more than 10% of a CPO's capital are also principals, whether or not they do so directly or indirectly through entities. Because Chazon disclosed the Vision Foundations as principals of Chazon, NFA had a regulatory interest in determining whether or not any individual besides Fejokwu was a principal of Chazon by virtue of capital contributions made through the Vision Foundations. Since Fejokwu had told the team that the Vision Foundations were funded 100 percent by Chazoneering, NFA now had a second reason for needing the Chazoneering bank statements.

Based on the foregoing, we hold that NFA has legitimate regulatory reasons for requesting the Chazoneering S.A. bank statements.

Chazon and Fejokwu argue that the Complaint contained no allegations of customer harm or fraud.

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[11] NFA Registration Rule 204(a)(1)(A)(i) requires applicants for registration as CPOs to file a Form 7-R. Form 7-R requires disclosure of principals that are entities. NFA Registration Rule 208(a) requires, in pertinent part, that registrants amend their Form7-R to disclose new principals that are entities.

(Respondents' Brief, p.8). Chazon and Fejokwu also assert that they fully cooperated until NFA's requests for records became "unreasonably burdensome, harassing, of no, or only remote theoretical relevance to the scope of NFA oversight." (Respondents' Brief, p.7). Finally, they claim that they "demonstrated responsible conduct and diligent cooperation until the burden of requests became unreasonable and subject to a good faith disagreement on their relevance," and that Fejokwu's testimony at the hearing "demonstrated that Appellants throughout the examinations sought to comply with NFA questions and documents." Finally, Chazon and Fejokwu argue that the Complaint contained no allegations of customer harm or fraud. (Respondents' Brief, p.8).

Compliance Rule 2-5 makes no reference to customer harm or fraud. Rather, the rule specifically requires that a Member "cooperate fully and promptly with any NFA investigation, inquiry, audit, examination or proceeding regarding compliance with NFA requirements...." (emphasis added). Thus, while NFA's review of the documents which Chazon and Fejokwu did provide did not uncover fraud or customer harm, this has nothing to do with the question of whether they violated Compliance Rule 2-5. Moreover, the 2011 Chazoneering bank statements may or may not have included information that would have led to a discovery of fraud or customer harm. It is their own refusal to provide the requested bank statements that prevents us from concluding, as Chazon and Fejukwo assert, that there was no fraud or customer harm.

As to Chazon and Fejokwu's supposed responsible conduct and diligent cooperation, we note that the

record demonstrates the exact opposite. At the time the examination team made its initial request for the bank statements, the team thought, incorrectly, that Chazoneering LLC was the entity involved, so the specific request was made for the Chazoneering LLC bank statements. However, Fejokwu knew that the team was mistaken and that Chazoneering S.A. was the correct entity, but rather than inform it of the error, he allowed the team to continue to act on its mistaken belief.

Moreover, in his communications with the team, he was careful to use the term "Chazoneering" rather than Chazoneering LLC Chazoneering S.A.

Therefore, we hold that Chazon and Fejokwu's failure to provide the 2011 Chazoneering bank statements is a violation of NFA Compliance Rule 2-5.

B. The penalty imposed by the Hearing Panel is appropriate

Chazon and Fejokwu assert that the Hearing Panel abused its discretion by permanently barring them from NFA and from acting as a principal of an NFA Member. They argue that their failure to provide the bank statements was not willful and contumacious or tied to any wrongdoing alleged by a customer or NFA. They claim that the penalty is not justified by the violation and request this Committee to vacate the penalty.

NFA Compliance Rule 3-14(b) provides that the Appeals Committee may increase, decrease or set aside the penalties that are imposed by a Hearing Panel, or may impose other and different penalties as

it sees fit. Acting pursuant to this authority, this Committee has exercised its authority to modify or increase penalties imposed by Hearing Panels on a number of occasions when it has determined that the penalty imposed by a Hearing Panel was not an appropriate response to the violations that were found to have been committed.[12]

NFA has consistently followed the factors enumerated by the CFTC in a 1994 Policy Statement, which provides guidance to self-regulatory organizations (SROs) regarding the fashioning of appropriate sanctions.[13] The Policy Statement lists several factors that may be considered in determining appropriate sanctions on a case- by-case basis and comments that although the list is an "effective tool", it does not require uniformity among all SROs in the factors considered. Factors set out in the Policy Statement that we find to be particularly relevant to determining appropriate sanctions include:

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[12] See, *e.g.,* In the Matter of Commonwealth Financial Group, Inc., et al., NFA Case Nos. 96-APP-003 and 004, on appeal from 94-BCC-013 (1997); In the Matter of Diversified Trading Systems, Inc., NFA CCase No. 92-APP-009, on appeal from 92-BCC- 014 (1993); In the Matter of Johnny L. Johnson, Jr., NFA Case No. 97-APP-003, on appeal from 96-BCC-014 (1998); and In the Matter of Universal Commodity Corporation, NFA Case Nos. 98-APP-001, 002 and 003, on appeal from 95-BCC-020 (2000).

[13] See, CFTC Policy Statement Relating to the Commission's Authority to Impose Civil Monetary Penalties and Futures Self-Regulatory Organizations' Authority to Impose Sanction: Penalty Guidelines, [1994-1996 Transfer Binder] Comm. Fut. L. Rep (CCH) 1l 26,265 at 42,248 (CFTC Nov. 1994).

- The gravity of the offense; and
- Whether the sanction will be sufficiently remedial to deter future violations by the respondent and others.

This Committee and NFA's Hearing Panels have consistently held that NFA Compliance Rule 2-5 is the foundation for NFA's effectiveness as a self-regulatory organization. See, *e.g., In the Matter of H. James Kyle, Jr.,* NFA Case No. 87-BCC-016, Appeals Committee Decision (Sept. 28, 1988) (the effectiveness of NFA's enforcement program is largely dependent on the prompt and full cooperation of Members and Associates under NFA Compliance Rule 2-5); *In the Matter of Rex Nowell,* NFA Case No. 88-BCC-021, Mar. 10, 1989 (NFA Compliance Rule 2-5 requiring Members and Associates to cooperate with NFA in investigations is the linchpin of NFA's statutory responsibilities); *In the Matter of Denver Difference Energy LLC, et al.,* NFA Case No. 12-BCC-002, Dec. 18, 2012 (failing to cooperate strikes at the very heart of NFA's oversight abilities).

As we have previously stated:

> As an SRO, NFA must rely on its Members' adherence to their obligations under NFA Compliance Rules to cooperate promptly and fully with NFA investigations and to refrain from submitting false or misleading information to their regulator. Any Member's failure to fully and candidly abide by these important obligations is always a matter of great concern. For this

> Committee to treat such violations otherwise would undermine NFA's ability to provide the level of oversight that its mission of protecting the public, the membership and the markets requires. *In the Matter of Forex Liquidity (Robert Gray),* NFA Case No. 08-BCC-023, Appeals Committee Decision (Sept. 12, 2011) at p. 9.

We find Chazon and Fejokwu's argument that the penalty is too severe in light of their violation unpersuasive. Although they claim that their failure to provide the 2011 Chazonering bank statements was not willful, the evidence proves otherwise.

Fejokwu made a conscious decision to withhold those records based on his own assessment as to whether NFA had a right to those documents and whether the documents were relevant to NFA's inquiry. Moreover, Fejokwu knowingly misled the examination team by failing to advise them that Chazoneering S.A. not Chazoneering LLC had contributed funds to the Vision Foundations.

Their claim that no customer harm or fraud was revealed by the examination is similarly unpersuasive. As a general matter, a Member might refuse to produce requested records in an NFA examination to prevent NFA from uncovering customer harm or fraud. While there is no evidence in the record that Chazon and Fejokwu in fact committed fraud or harmed customers, that may simply be because the documents they refused to produce contained or led to such evidence. It is for this reason, among others, that Members cannot be

permitted to pick and choose which records to produce and which not to produce.

We find that Chazon and Fejokwu's deliberate refusal to comply with NFA's legitimate request for records is a very grave violation of NFA Compliance Rule 2-5. Because of the significance of NFA Compliance Rule 2-5 to NFA's self-regulatory function, we also find that a significant sanction is necessary to deter future violations of NFA Compliance Rule 2-5 by Chazon, Fejokwu or others. A permanent bar from NFA membership and from acting as a principal of an NFA Member is completely appropriate in light of the facts and circumstances of this case.

III

CONCLUSION

After considering the record below, as amended by the addition of the Attachment E-mail Chain, and the arguments raised by the parties on appeal, the Appeals Committee affirms the Panel's findings of violations and the sanctions that it imposed on Chazon and Fejokwu in all respects.

This Decision shall be effective 30 days after it is served on Chazon and Fejokwu as prescribed by CFTC Regulation 171.9. They may appeal this Decision to the Commission under CFTC Regulation 171.23 by filing a Notice of Appeal and the required filing fees with the Commission within 35 days after the Decision is mailed.

Under CFTC Regulation 171.22, they may petition the Commission to stay the effective date of this Decision by filing a petition, a Notice of Appeal, and

the required filing fees with the Commission within fifteen days after this Decision is mailed.

Under the provisions of CFTC Regulation 1.63, the sanctions imposed in this Decision render Fejokwu ineligible to serve on a disciplinary committee, arbitration panel, oversight panel or governing board of any self-regulatory organization, as that term is defined in CFTC Regulation 1.63.

NATIONAL FUTURES ASSOCIATION
APPEALS COMMITTEE

By:

_____

William F. McCoy
Chairman

Date: November 23, 2015

NATIONAL FUTURES ASSOCIATION
BEFORE THE
HEARING PANEL

In the Matter of:
CHAZON QTA QUANTITATIVE TRADING ARTISTS LLC
(NFA ID#424320)

and

LAWRENCE I. FEJOKWU
(NFA ID#274264)

Respondents,

NFA Case No. 14-BCC-006

DECISION

On November 7, 2014, a designated Panel of the Hearing Committee (Panel) held a hearing to consider the charges against Chazon QTA Quantitative Trading Artists LLC (Chazon) and Lawrence I. Fejokwu (Fejokwu). The Panel issues the following Decision under National Futures Association (NFA) Compliance Rule 3-10.

PROCEDURAL BACKGROUND

On May 15, 2014, NFA's Business Conduct Committee issued a one- count Complaint against Chazon and Fejokwu. The Complaint charged that Chazon and Fejokwu violated NFA Compliance

Rule 2-5 by failing to cooperate promptly and fully with NFA during the course of an examination of Chazon because they refused to provide bank records NFA requested in order to determine the source of funds used to capitalize Chazon and to fund the pools that Chazon operates and determine whether any other persons should be listed as principals of Chazon. On June 30, 2014, Chazon and Fejokwu filed an Answer denying the material allegations in the Complaint.

II

EVIDENCE PRESENTED AT THE HEARING

NFA presented one witness at the hearing and introduced a number of documents into evidence. At the hearing, Fejokwu testified on behalf of Chazon and himself and introduced a number of documents into evidence. A summary of the relevant evidence follows:

Arthur Kenigstain

Arthur Kenigstain (Kenigstain), a Manager in NFA's Compliance Department, testified substantially as follows:

Chazon has been a registered commodity pool operator (CPO) and an NFA Member since January 2013. Fejokwu is an associated person (AP) and listed principal of Chazon. Fejokwu has been a listed principal of Chazon since December 2012 and an AP since January 2013. Vision New Africa and Vision New Nigeria are two foundations (collectively, the Vision Foundations) that are also principals of Chazon. Chazon operated two pools, the

Maria Desatadora Nos Master Investment SA (Maria Master Fund) and the Maria Desatadora Umbrella Fund (Maria Umbrella Fund), which were active at the time NFA staff commenced its exam of the firm in March 2014. The Maria Umbrella Fund acted as the feeder fund for the Maria Master Fund.

Chazon is currently pending withdrawal as a CPO and NFA Member. NFA placed a hold on Chazon's withdrawal for a number of reasons, including: NFA wanted to ensure that Chazon qualified for the exemption from CPO registration it claimed; the large amount of losses sustained by the fund in 2013; and the fact that the required year-end certified audits of both pools were outstanding.

Kenigstain was the manager assigned to the examination of Chazon. On March 25, 2014, the examination team attempted to visit Chazon's main office location in New York City and Fejokwu's home address in New Jersey. Since Fejokwu was not at either location, the examination team reached out to him by e-mail, and Fejokwu responded within the hour. The examination team then made arrangements to speak with Fejokwu later that afternoon by phone.

During the afternoon phone conversation, the examination team learned that Fejokwu was in England. Kenigstain stated that Fejokwu was cooperative in answering the questions posed by the examination team. Fejokwu informed the examination team that the Vision Foundations were the only two participants that the pools had ever had, and that the Foundations were set up for charitable purposes for his home country of Nigeria. Fejokwu also represented that the Vision Foundations were 100 percent endowed by him.

After the March 25 phone call, Kenigstain sent Fejokwu an e-mail with an initial list requesting certain documents pertaining to the Vision Foundations, Chazon, and the two pools (NFA Exhibit 4). Kenigstain stated that Fejokwu responded very promptly to the e-mail that same night and provided NFA with satisfactory responses to the specific document requests.

On March 26, the examination team sent a request for information to all NFA Member Futures Commission Merchants (FCMs) and Forex Dealer Members (FDMs) instructing those firms to notify NFA if the firm currently or had ever carried any accounts in the name of Fejokwu, Chazon, the Vision Foundations, the pools, or other affiliated entities. NFA received responses from several FCMs, which confirmed the information Fejokwu had provided to NFA - that the pools had started with $1.6 million in 2011 and that their current value was approximately $125,000. After reviewing the monthly statements and speaking with Fejokwu, the examination team determined that the entire decline in assets was due to trading losses. Kenigstain also stated that no other funds were invested after the initial $1.6 million in 2011, and there were no redemptions by any third parties.

As part of Chazon's withdrawal request, Fejokwu claimed that Chazon qualified for an exemption from CPO registration for operating small pools,[14] which

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[14] Commodity Futures Trading Commission (CFTC) Regulation 4.13(a)(a) exempts from CPO registration persons who operate one or more small pool(s) that has received less than $400,000 in aggregate capital contributions and that have no more than 15 participants in any one pool. In determining whether the aggregate capital contributions

among other requirements is limited to a CPO that has received aggregate capital contributions for all its pools that do not exceed $400,000. Because the funds held by Chazon's pools initially exceeded the $400,000 threshold, Chazon would not qualify for the exemption unless all funds in excess of $400,000 were proprietary funds. As a result, NFA requested bank statements for the Vision Foundations to determine their source of funding and the pools' bank statements to confirm that the pool funds had been received from the Vision Foundations. Fejokwu provided the requested information, which showed that both Vision Foundations were directly or indirectly funded by Chazoneering LLC (Chazoneering)[15] and confirmed that the $1.6 million coming into the pools in 2011 was from the Vision Foundations. Kenigstain concluded that Chazoneering LLC was the ultimate source of the $1.6 million invested in the pools. Kenigstain believed that Chazoneering LLC was a former CPO and NFA Member that had been owned and operated by Fejokwu from 2003 until it withdrew in 2005.

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exceed $400,000, proprietary funds (e.g., funds contributed by the pool, the pool's commodity trading advisor, principals and certain related family members) may be excluded.

[15] The bank statements showing the initial funding actually refer to an entity called Chazoneering SA. At the hearing, Fejokwu pointed out this difference during Kenigstain's testimony and represented that Chazoneering LLC and Chazoneering SA were different entities. As discussed during Fejokwu's testimony, Fejokwu never pointed out this difference to NFA staff during their examination. For purposes of this Decision, our reference to Chazoneering includes both Chazoneering LLC and Chazoneering SA

Kenigstain stated that Fejokwu represented to NFA that Chazoneering LLC continues to operate as an LLC and is 100 percent owned by him.

When the examination team learned that the Vision Foundations were actually funded by Chazoneering, they requested Chazoneering's 2011 bank statements and informed Fejokwu that they needed the statements to confirm Fejokwu's representations that Chazoneering was 100 percent funded by him (NFA Exhibit 8).

Fejokwu responded that he would not provide the requested Chazoneering bank statements because he had already provided sufficient support to show that the Vision Foundations were 100 percent funded by him and because NFA should accept his verbal representations (NFA Exhibit 9). Over the next few days the examination team and Fejokwu had a series of back-and-forth correspondences, with the examination team making multiple requests for the Chazoneering bank statements and informing Fejokwu of the requirement under Compliance Rule 2-5 that he cooperate fully with an NFA examination. Fejokwu refused to comply with these requests. However, he agreed to meet with the examination team at his personal residence in New Jersey on April 7.

At the April 7 meeting, Fejokwu informed the examination team that he had listed the Vision Foundations as principals of Chazon on April 3. Kenigstain stated that Fejokwu had also informed him in an April 1 e-mail that the Vision Foundations were principals; however, Kenigstain noted that informing him that the Vision Foundations were principals was different than listing them as principals in the online registration system.

Kenigstain stated the fact that the Vision Foundations were listed principals of Chazon was significant because NFA now needed the Chazoneering bank statements for a second reason, to determine if any individuals investing in Chazoneering indirectly contributed more than ten percent to Chazon that would require such individual to also be listed as a principal. According to Kenigstain, the only way NFA could determine whether there were any unlisted principals was by looking at the Chazoneering bank statements.

The examination team stressed to Fejokwu the importance of the Chazoneering bank statements and explained that they needed them to determine whether the source of the funds in the pools was proprietary and to determine whether any other individuals were required to be listed as principals of Chazon. Fejokwu represented that he disagreed with NFA's request, but would consider it.

Kenigstain agreed that on April 7 he stated that he was requesting the Chazoneering bank statements to identify the source of Chazoneering's funding.

Kenigstain acknowledged that an e-mail sent to Fejokwu after the April 7 meeting indicated that the examination team was requesting the Chazoneering statements because they wanted to confirm that Chazoneering was not required to be registered. Kenigstain explained that as the examination evolved, there were other reasons why NFA needed the bank statements, including determining whether there were any potential registration issues after it learned that the Vision Foundations were listed principals of Chazon.

After the April 7 meeting, the examination team sent Fejokwu another e-mail requesting the Chazoneering bank statements from 2011 and January 2013 to current. The 2011 bank statements were important, because that was when Chazoneering made the investment in the Vision Foundations. In response, Fejokwu replied that he still disagreed with NFA's request for the Chazoneering bank records, but would make a one-time exception and would provide NFA with the 2013 to current Chazoneering bank statements (NFA Exhibit 10). Kenigstain stated that this did not fully satisfy NFA's request, because NFA had also requested Chazoneering's 2011 bank statements when it initially funded the Vision Foundations' investment in the pools.

The examination team sent Fejokwu another e-mail on April 8 making it clear that the requests for the Chazoneering bank statements and the Vision Foundations' bank statements were not optional (NFA Exhibit 11) and explaining why NFA needed this information. The e-mail included a link to the CFTC regulation regarding indirect ownership of a Member firm and bolded language informing Fejokwu of his obligations under NFA Compliance Rule 2-5. Fejokwu responded that he "absolutely will not provide" the requested Chazoneering bank statements or bank statements for the Vision Foundations (NFA Exhibit 11).

NFA issued an examination report to Chazon in May 2014 indicating that Chazon and Fejokwu had failed to cooperate fully with NFA during an examination by not providing the requested bank statements (NFA Exhibit 12). NFA did not receive the 2011 bank statements for Chazoneering or any

other documentation from Fejokwu after issuing the May examination report.

The examination team spoke with a CFTC staff member regarding the potential registration exemption, but did not discuss the issue of the Vision Foundations being principals. The CFTC staff member informed them that once Fejokwu relinquished ownership of his investment and provided it to the Vision Foundations, the funds were no longer proprietary.

According to Kenigstain, the examination team explained to Fejokwu multiple times in multiple e-mails why NFA needed the statements and referenced the specific applicable regulations. Each time Fejokwu adamantly denied NFA's request.

Kenigstain acknowledged that he may have stated during the April 7 meeting that NFA wanted to ask Fejokwu for Chazoneering's bank statements first before sending a Request for Information to FCM Members when NFA had actually already sent a Request for Information to FCMs on March 26. Kenigstain explained, however, that NFA does not have a responsibility to disclose to Members when it reaches out independently to other Member firms and does not typically disclose this information.

Kenigstain also acknowledged that during the course of NFA's examination of Chazon, the initial reasons NFA indicated that they need the bank statements of Chazoneering and the Vision Foundations changed. Kenigstain noted, however, that this was not unusual because during the course of an examination, the examination team often learns of new information that creates new requests

or the information provided results in follow up requests.

Lawrence Fejokwu

Fejokwu testified substantially as follows:

Fejokwu was born in Nigeria and has been living in the United States for 21 years. He attended school in Virginia and began working at Morgan Stanley as an AP in 1996. Fejokwu left Morgan Stanley in 1997 to start his own business known as Chazon Africa Investors, which was registered with NFA at one time. Fejokwu also started the Vision Foundations in 1997.

According to Fejokwu, Chazoneering was conceived in 1997. Fejokwu referred to a document entitled "Vision Statement" dated 1997 (Respondent Exhibit 4), which indicated that Chazon New Africa Investors is a member of the Chazon New Africa Investment Group. Fejokwu intended that Chazon New Africa Investors would be an investment manager and the Vision Foundations would be sister entities. Fejokwu noted that the Vision Statement stated that Chazon New Africa Investment Group shall create wealth through its businesses and ensure the preservation of wealth through its sister organizations, the Vision Foundations. Fejokwu stated that this structure is not unusual or suspicious and is very similar to a foundation in England where there is a foundation that is also the owner of an investment management company.[16]

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[16] Fejokwu submitted other documentation, which indicated that he had been involved with the Vision Foundations since 1997.

In 2011, Fejokwu launched the Maria Master Fund and the Maria Umbrella Fund with the intention to build a track record, grow the business and go out and raise investor money. According to Fejokwu he was advised that he did not need to register as a CPO because his trading was limited to proprietary money, which he could do through his own account. Fejokwu indicated that he registered because he wanted to have the structure in place so that he would be able to raise investor money later.

Fejokwu planned on operating the fund with his money for about a year and then trying to raise other money. According to Fejokwu the fund began to incur losses by the nine- month mark, and by March 2013, the fund had an overall loss. At that point, Fejokwu did not feel there was any point in trying to raise other money.

Fejokwu filed the pool quarterly report (PQR) with NFA every quarter, which detailed the pool's current assets, monthly returns and service providers.

Fejokwu stated that each time he filed this report, NFA staff contacted him because he usually made a mistake in the filing. NFA staff would also ask him about the losses incurred in the pool. Fejokwu would explain that there were trading losses and offer to provide trading statements. According to Fejokwu, NFA staff always appeared satisfied with his explanation. On cross examination, Fejokwu acknowledged that by the time he had filed his first PQR with NFA, the pool had already lost most of its funds, and he had not provided the rates of return for the prior year and a half that the pool was operating.

By the end of 2013, the fund was valued at roughly $125,000. Fejokwu then began to question whether it made any sense to continue to be registered, especially since he knew he was required to have an independent audit of the pool done, which he estimated would cost approximately $25,000. Fejokwu noted that it made no sense to spend nearly a quarter of the pool's assets for this audit since no one other than himself and NFA would ever see it. As a result, near the end of December 2013 he requested a withdrawal of his registration and attempted to claim the CPO registration exemption he believed he was entitled to because he was only managing proprietary money. In the withdrawal request, Fejokwu indicated that the pool's assets were less than $400,000 and qualified for the small pool exemption. He also indicated that the pool could not bear the financial requirements of registration.

Since Fejokwu did not hear anything on his withdrawal request, he contacted NFA in February 2013. An NFA staff person requested some additional information about the investors in the pool. Fejokwu confirmed that the investors were the two Vision Foundations. In early March, Fejokwu became anxious about the exemption and started sending frequent e-mails to NFA staff inquiring about the status of the exemption. At one point, NFA staff informed Fejokwu that his withdrawal could not be processed until he submitted the audited statement for the pool or he obtained a waiver from the CFTC for filing the statement. Fejokwu contacted the CFTC regarding the waiver and informed NFA that he was waiting for the response granting the waiver. According to Fejokwu, NFA staff informed him that once he received a waiver, NFA would process the withdrawal.

Fejokwu stated that while he was attending a conference in Oxford, England he received an e-mail from NFA staff that informed him that NFA had been trying to contact him. According to Fejokwu, he immediately called NFA and they informed him that NFA was conducting an exam of his firm. NFA provided him with a list of documents. Fejokwu stated that NFA staff told him that they would process his withdrawal if they found no problems in their review of the documents he provided.

Fejokwu provided NFA with all of the requested documents that night.

The next day NFA staff contacted Fejokwu and informed him that he did not qualify for the exemption for a pool with less than $400,000 in contributions because initially the pool had over $1 million in contributions. According to Fejokwu, NFA staff told him that in order to qualify for an exemption all the money contributed to the pool had to come from him or entities he controls. Fejokwu indicated that he told NFA that all the funds came from him and he provided bank statements that showed that the funds deposited into the Vision Foundations came from Chazoneering, which is an entity he controls. After he provided these bank statements to NFA, NFA staff asked for bank statements showing that Chazoneering was funded by Fejokwu. Fejokwu stated that this was an impossible request because any business account or personal account is going to show deposits coming from more than one source. Fejokwu also stated that he did not want to provide NFA with Chazoneering's bank statements because Chazoneering is not an NFA Member and is outside of NFA's jurisdiction.

Fejokwu acknowledged on cross examination that when he originally told NFA staff that he funded the two Vision Foundations, he did not mention that he did this through Chazoneering. NFA staff learned that Chazoneering funded the two Vision Foundations after reviewing Barclay's wealth statements provided by Fejokwu. Fejokwu noted that the Chazoneering referenced in the Barclay's wealth statements is not the same entity that was formerly an NFA Member. Specifically, Chazoneering LLC was the NFA Member and the two Vision Foundations were funded by Chazoneering SA. Fejokwu acknowledged that when NFA staff asked for information and documentation related to Chazoneering, he never clarified with NFA that there were two separate entities and he was careful never to use the term Chazoneering LLC when responding to NFA. Fejokwu agreed however that he had control over the bank records of Chazoneering SA, although he was not certain that he could get copies of bank statements because the accounts are not very active. Fejokwu also stated that although it's "none of NFA's business" how Chazoneering SA earned its money, he did inform NFA that it was involved in trade finance.

According to Fejokwu, he then reviewed the requirements of the exemption and learned that a CPO would qualify for the exemption if a pool's funding came from the CPO or its principals. Fejokwu then believed he did not have to demonstrate that Chazoneering was funded by him because he could show that all the funding to the pool came from the Vision Foundations, which were principals of the CPO. Fejokwu testified that NFA knew that he qualified for the exemption because the principals of the CPO provided all the pool funding

so, according to Fejokwu, staff then asked him to provide Chazoneering's bank statements to show that Chazoneering was not required to be registered. NFA also asked him to provide bank statements for the two Vision Foundations to show that there was no one who funded the Vision Foundations through Chazoneering that should also be listed as a principal.

Fejokwu stated that he cooperated with NFA throughout this process but in his opinion every time he provided NFA what was requested, they "moved the goal post." Fejokwu was surprised when he received a copy of the May 15, 2014 Complaint charging him with failing to cooperate with NFA. Fejokwu stated that in his last communication with NFA he indicated that he did not agree with NFA staff's position that he was required to provide the records relating to the Vision Foundations and Chazoneering. According to Fejokwu, he told NFA staff that he was willing to discuss the issue with NFA staff's superiors, but did not hear back from NFA. He also asked for an extension of time to respond to NFA's examination report. He received the Complaint prior to the extended deadline for him to respond to the examination report.

III

FINDINGS, CONCLUSIONS AND PENALTY

Chazon was a CPO Member of NFA during the period covered by the Complaint. As an NFA Member, Chazon was required to comply with NFA requirements and is subject to disciplinary proceedings for violations of NFA requirements that

occurred while it was an NFA Member.[17] Fejokwu was a principal and AP of Chazon and an NFA Associate Member during the period covered by the Complaint. Therefore, Fejokwu was required to comply with NFA requirements, and NFA has jurisdiction over him for purposes of this action.[18]

NFA's Complaint alleges that Chazon and Fejokwu violated NFA Compliance Rule 2-5 by failing to cooperate promptly and fully with NFA during the course of an examination. Specifically, the Complaint alleges that Chazon and Fejokwu refused to produce bank records NFA requested and viewed as necessary to determine the underlying source of funds that were used to capitalize Chazon and fund the pools that it operates and to determine whether there are other individuals who should be listed principals of Chazon.

There is no dispute that Chazon and Fejokwu had control over the Chazoneering bank statements and that Chazon and Fejokwu refused to provide NFA with the requested bank statements. The only real question before the Panel is whether NFA had a legitimate regulatory reason to request these bank records. Based on the evidence presented at the hearing, the Panel concludes that NFA had a legitimate and important regulatory need to review the requested bank records and Chazon's and Fejokwu's refusal to provide the records is a clear violation of NFA Compliance Rule 2-5.

The Panel heard significant testimony from Kenigstain on the reasons NFA requested the bank statements and the Panel believes these reasons

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[17] *See* NFA Compliance Rule 2-14.

[18] *See* NFA Bylaw 301(b) and NFA Compliance Rule 2-14.

demonstrate that NFA had a legitimate regulatory purpose in requiring that Chazon and Fejokwu provide the bank statements. Chazon is a registered CPO and an NFA Member. When it requested to withdraw its registration based on the small pool exemption, NFA had a legitimate regulatory reason to determine if Chazon did indeed qualify for that exemption especially since the information known to NFA ($1.6 million in initial capital contributions) on its face indicated that Chazon did not qualify for this exemption, which is limited to CPOs that have collected $400,000 or less in aggregate capital computations. Moreover, the information NFA had available to it indicated that the Vision Foundations, which were the only contributors to the pools, were funded by Chazoneering, an entity that NFA believed was a former CPO Member of NFA, which certainly raises questions on whether that entity was still acting in that capacity and raising funds from other sources.

At the hearing, Fejokwu "clarified" for the first time that the Chazoneering entity that funded the Vision Foundations was not the same entity as Chazoneering LLC, the former NFA Member. This clarification, however, does not lessen NFA's legitimate regulatory interest in learning where Chazoneering SA obtained the funds to invest in the two Vision Foundations that are listed principals of Chazon, particularly since Fejokwu was very vague on this question, indicating that it was involved in trade finance and alluding to the fact that its accounts may show deposits coming from more than one source. Moreover, the Panel believes that this raises issues regarding Fejokwu's credibility since he acknowledged that he never highlighted this distinction to NFA during the exam and actually

appeared to be trying to deceive NFA. Fejokwu acknowledged that he knew that NFA staff was trying to make a connection between Chazoneering SA and Chazoneering LLC, but rather than alert NFA to the distinction, Fejokwu carefully answered the questions so as not to identify the distinction.

Fejokwu also took significant issue at the hearing with the fact that NFA later represented that NFA needed the Chazoneering statements to ensure that there were no unlisted principals of Chazon. NFA, however, "changed" its reasoning in direct response to Chazon suddenly listing the two Vision Foundations as principals of Chazon, which Fejokwu then claimed eliminated any need to further pursue the funding source because now the pools had been funded by principals of the CPO and therefore Chazon qualified for the exemption. The Panel, however, believes that NFA had every reason to now be concerned with whether there were any unlisted principals after Chazon listed the Vision Foundations as principals. Again, based on the information available to NFA, two principals of the NFA Member were funded 100 percent by a single entity, Chazoneering. If that entity was ultimately controlled by an individual other than Fejokwu, then that person likely needed to be a listed principal of Chazon. NFA needs more than a representation from Fejokwu that he is sole owner of Chazoneering.

Moreover, the sudden listing of the Vision Foundations, which appeared to have been an attempt by Fejokwu to find a reason not to provide the Chazoneering statements, certainly gave NFA legitimate concerns as to the funding of Chazoneering, which could have a direct impact on who was required to be a listed principal of Chazon.

NFA clearly has a legitimate regulatory reason, in fact a responsibility, to ensure that the principals of its Member firm are properly listed, and more importantly, not subject to a statutory disqualification.

The Panel also notes that Fejokwu readily handed over certain Chazoneering bank statements, but refused to provide the statements during the time period the Vision Foundations were funded. The Panel believes that this response by Fejokwu was further reason for NFA to question the funding of Chazoneering, and ultimately the funding of Chazon, as well as who were the pool participants.

At the hearing, Fejokwu argued that NFA did not have a right to request the Chazoneering bank statements because Chazoneering is not an NFA Member.

NFA has the authority to require its Members to provide documents from non-member entities over which a Member has control if there is legitimate regulatory purpose for requesting the documentation. As discussed above, the Panel has concluded that NFA did have a legitimate regulatory need for asking for the Chazoneering and Vision Foundations bank statements. NFA made numerous requests for these bank statements and provided Fejokwu and Chazon with adequate reasoning as to why NFA needed these bank statements. Fejokwu, individually and as a principal of Chazon, had control over Chazoneering's bank statements. There is no question, therefore, that Chazon and Fejokwu willfully violated NFA Compliance Rule 2-5 by refusing to provide NFA with the 2011 Chazoneering bank statements.

A number of factors must be considered when determining the appropriate sanctions for these violations. One of the more important factors is the nature of the violations. The evidence at the hearing clearly establishes that Fejokwu, on behalf of himself and Chazon, repeatedly refused to provide NFA with the requested bank statements despite being informed of his obligation under NFA Compliance Rule 2-5 to provide this information. Since NFA Compliance Rule 2-5 is the foundation by which NFA is able to obtain the information it needs from its Members to carry out its regulatory responsibilities, any violation of this rule is a very serious violation and cannot be tolerated. Based on the above findings and discussion, the Panel hereby imposes the following sanctions:

1. Chazon is permanently barred from NFA membership and from acting as a principal of an NFA Member.

2. Fejokwu is permanently barred from NFA membership, associate membership and from acting as a principal of an NFA Member.

IV

APPEAL

Chazon and Fejokwu may appeal the Panel's Decision to the Appeals Committee of NFA by filing a written Notice of Appeal with NFA within fifteen days of the date of this Decision. Pursuant to NFA Compliance Rule 3-13(a), the Notice must describe those aspects of the disciplinary action to which exception is taken and must include any request to

present written or oral arguments. The Decision shall be final after the expiration of the time for appeal or review unless it is appealed or reviewed.

V

INELIGIBILITY

Pursuant to the provisions of CFTC Regulation 1.63, this Decision and the sanctions imposed by it render Fejokwu permanently ineligible to serve on a governing board, disciplinary committee, oversight panel, or arbitration panel of any self-regulatory organization as that term is defined in CFTC Regulation 1.63.

NATIONAL FUTURES ASSOCIATION
HEARING PANEL

Dated: 2/27/15

Stephen T. Bobo
Chairperson

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 17-2408

CHAZON QTA QUANTITATIVE TRADING ARTISTS, L.L.C., and LAWRENCE I. FEJOKWU,
Petitioners

v.

COMMODITY FUTURES TRADING COMMISSION

On Appeal from the Commodity Futures Trading Commission
(Case No. CRAA 16-01)

SUR PETITION FOR PANEL REHEARING

Present: CHAGARES and JORDAN,
Circuit Judges[19]

[19] The Honorable Thomas I. Vanaskie, a member of the merits panel that considered this matter, retired from the Court on January 1, 2019. The request for panel rehearing has been submitted to the remaining members of the merits panel.

The petition for rehearing filed by petitioners in the above-entitled case having been submitted to the judges who participated in the decision of this Court, it is hereby O R D E R E D that the petition for rehearing by the panel is denied.

BY THE COURT,

s/Michael A. Chagares
Circuit Judge

Dated: February 20, 2019
Lmr/cc: Tadhg Dooley
Melissa Chiang
Robert A. Schwartz

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-2408

CHAZON QTA QUANTITATIVE TRADING ARTISTS, L.L.C., and LAWRENCE I. FEJOKWU,

Petitioners

v.

COMMODITY FUTURES TRADING COMMISSION

On Petition for Review from the Commodity Futures Trading Commission
(CFTC Docket No. CRAA 16-01)

Submitted under Third Circuit L.A.R. 34.1(a)
October 29, 2018

Before: CHAGARES, JORDAN, and VANASKIE, Circuit Judges.

JUDGMENT

This cause came to be considered on the record from the Commodity Futures Trading Commission and was submitted under Third Circuit L.A.R. 34.1(a) on October 29, 2018.

After consideration of all the contentions raised, it is ORDERED and ADJUDGED that the petition for review is DENIED. Costs shall be taxed against the petitioners. All in accordance with the Opinion of the Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: December 13, 2018

Certified as a true copy and issued in lieu of a formal mandate on February 28, 2019

Teste: Patricia S. Dodszuweit
Clerk, U.S. Court of Appeals for the Third Circuit

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-2408

CHAZON QTA QUANTITATIVE TRADING ARTISTS, L.L.C., and LAWRENCE I. FEJOKWU,
Petitioners,

v.

COMMODITY FUTURES TRADING COMMISSION,
Respondent.

REPLY MEMORANDUM IN SUPPORT OF PETITIONERS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL APPENDIX

Inasmuch as Petitioners have not relied, and have no intention of relying, upon the 2011 bank statement appended to their Reply Brief, most of the arguments in the CFTC's Opposition to Petitioners' Motion for Leave to File a Supplemental Appendix are completely beside the point. As explained in their Motion, Petitioners seek leave to file a supplemental appendix including the 2011 bank statement *solely* to put to rest the CFTC's false assertion that Petitioners refuse to turn over the document "even now." Remarkably, the CFTC persists in this falsehood and has doubled down in certain respects, necessitating this reply.

Petitioners included the 2011 bank statement as an attachment to their Reply Brief only because the

CFTC had, in its Response Brief, asserted that Petitioners refuse to provide the statement "even now." That assertion was both false and prejudicial, as (in context) it suggested that Plaintiffs refused to turn over the bank statement because they had something to hide, when in fact Petitioners had made multiple offers to provide the statement following the NFA Panel Hearing.[20]

For some reason, the CFTC refuses to acknowledge that its unsubstantiated assertion that Petitioners refuse to turn over the bank statement "even now" was, at a minimum, mistaken. Instead, it now claims that "[t]he statement in the CFTC's brief that Petitioners were unwilling to provide the bank statements 'even now' was in response to their continued argument that they do not have to provide them, as well as Mr. Fejokwu's position that he already provided the bank statements in the form of an email." CFTC Opp. at 3 n.1. To be clear, here is the statement in question, in its entirety:

> There is no question that Fejokwu failed to provide the Chazoneering bank statements for 2011, the period that it funded the Vision Foundations. *Even now, four years later,*

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[20] It is true, but beside the point, that Petitioners' offers came "too late." CFTC Opp. at 4 n.1. Petitioners did not mention the belated offers to provide the bank statement as a means of excusing their early refusal to do so, but in order to refute the CFTC's false assertion that they *continue* to refuse to produce the statement, as though they had something to hide. Petitioners maintain that they did not willfully violate Rule 2-5 because the NFA had no legitimate regulatory reason for demanding the statement in the first place and because they demonstrated a willingness to cooperate with the NFA. See Pet. Br. at 27–41; Pet Reply Br. at 5–9, 15.

> *Petitioners still refuse to provide these bank statements.* NFA's decision to find a violation of Rule 2-5, and the CFTC's decision to affirm, were therefore supported by substantial evidence and otherwise free from arbitrariness or capriciousness.

CFTC Br. at 25 (emphasis added). That the CFTC will not acknowledge and correct this misstatement in the face of direct contradictory evidence is remarkable.[21]

The CFTC's Opposition contains a few additional curiosities suggesting that its hostility to Mr. Fejokwu—or at least its desire to preserve a "win" at all costs—has clouded its judgment. For example, it criticizes Petitioners for "characteriz[ing] an email as an 'emailed statement from Barclay's Bank.'" CFTC Opp. at 4 n.1 (emphasis in original). But it offers no superior nomenclature for describing what is, in fact and indisputably, an "*email*" from "Barclay's Wealth," containing a "statement" of transactions in Chazoneering's account—one which, it should be

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[21] The contradictory evidence consists not only of the appended bank statement, itself, but also Mr. Fejokwu's uncontested representation, in Petitioners' Motion to Reconsider, that he had instructed his counsel "to inform the NFA that [he] was happy to . . . provide the NFA the bank statements in whatever form they required in order to speedily resolve/settle the case." AR1039. Though the CFTC attempts to downplay yet another offer to provide the bank statement in July 2016, it does not contest that Mr. Fejokwu made this initial offer shortly after the NFA hearing. And yet, it refuses to correct its misstatement and continues to suggest, without any record support, that Petitioners have something to hide. *See* CFTC Opp. at 4 n.1 ("If Petitioners truly had nothing to hide, they could have cleared this up a long time ago . . . .").

added, was sent to Mr. Fejokwu in response to his request for "*statements* for the period January 2011 to date." See AR858–60 (emphasis added).

This "*email*" was itself attached to another email that Mr. Fejokwu sent to the NFA Examiners on March 26, 2014, in response to their document request. See AR258–59. Because the NFA introduced that March 26 email as an exhibit *without* the attached Barclay's email, Petitioners sought leave to include the attachment in their initial administrative appeal. See AR855–56. The Appeals Panel permitted Petitioners to include the attachment, see AR940, but concluded that it was "not the functional equivalent of a bank statement," AR941. It was for that reason that Mr. Fejokwu later offered, on multiple occasions "to provide the NFA the bank statements in whatever form they required." AR1039.

As recounted in his Motion to Reconsider, Mr. Fejokwu instructed his counsel in December 2015 and on several occasions in 2016 to offer the bank statement as part of a proposed settlement. Id. The CFTC has never contested this. And, as the CFTC now acknowledges, Mr. Fejokwu reiterated the offer in a July 2016 letter. See CFTC Opp. at 4 n.1.[22] In that letter (quoted in the CFTC's Opposition), Mr. Fejokwu asked the CFTC to direct the NFA to "allow[] me to provide [the statement] in a format acceptable to

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[22] The CFTC accuses Petitioners of "misleading[]" the Court by suggesting that "Mr. Fejokwu sent a certified letter to (among others) Deputy General Counsel Robert Schwartz." Id. While it is true that the letter was addressed to Eileen Flaherty, then the Director of the Division of Swap Dealer and Intermediary Oversight, it was indisputably "sent" to Mr. Schwartz, as confirmed by the FedEx delivery confirmation Mr. Fejokwu possesses.

them." Yet rather than acknowledge that this statement belies its claim that "Petitioners still refuse to provide these bank statements," the CFTC insists that it "hardly reads as an offer to provide the actual statement." CFTC Opp. at 4 n.1. It is hard to see how it can be read in any other way.

Petitioners do not wish to prolong this side dispute unnecessarily. As they stated in their Motion, they do not seek to rely upon the contents of the 2011 bank statement, but only to rebut the CFTC's unsubstantiated accusation that they continue to withhold it in order to conceal something, either from the regulators or the Court. Unfortunately, the CFTC refuses to admit error and persists in casting aspersions on Petitioners that Petitioners are ill-equipped to defend themselves against, given the limited scope of the Administrative Record. Whether or not the Court grants the instant motion, Petitioners ask that the Court read these and other assertions with an appropriately skeptical eye and not to affirm on the basis of allegations or insinuations that Petitioners are procedurally unable to contest. See *generally* Pet. Reply Br. at 10–13.

Respectfully submitted,
/s/ Tadhg Dooley
Tadhg Dooley
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New Haven, CT 06508-1832
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Dated: July 24, 2018
Attorneys for CHAZON QTA QUANTITATIVE TRADING ARTISTS, L.L.C., and LAWRENCE I. FEJOKWU

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 17-2408

CHAZON QTA
QUANTITATIVE TRADING
ARTISTS, L.L.C. and
LAWRENCE I. FEJOKWU,
Petitioners

v.

COMMODITY FUTURES
TRADING COMMISSION

(Agency No. CRAA 16-01)

Present: CHAGARES, JORDAN and VANASKIE,
Circuit Judges

1. Motion by Petitioners for Leave to File Supplemental Appendix, construed by the Clerk as a motion to expand the record;

2. Response by Respondent in Opposition to Motion for Leave to File Supplemental Appendix;

3. Reply by Petitioners in Support of Motion for Leave to File Supplemental Appendix.

Respectfully,
Clerk/MS

ORDER

The foregoing motion is hereby granted.

By the Court,
s/Michael A. Chagares
Circuit Judge

Dated: December 12, 2018
MS/cc: All counsel/parties of record

STATUTES, REGULATIONS, AND RULES INVOLVED IN THE CASE

The Commodities Exchange Act provides, in pertinent part, Section 6(c)(5)

> (5) SUBPOENA.—For the purpose of securing effective enforcement of the provisions of this Act, for the purpose of any investigation or proceeding under this Act, and for the purpose of any action taken under section 12(f), any member of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in paragraph (7)) may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.

The Commodities Exchange Act provides, in pertinent part, Section 4(g). This is mirrored in 7 U.S.C. § 6g.

(a) In general

Every person registered hereunder as futures commission merchant, introducing broker, floor broker, or floor trader shall make such reports as are required by the Commission regarding the transactions and positions of such person, and the transactions and positions of the customer thereof, in commodities for future delivery on any board of trade

in the United States or elsewhere, and in any significant price discovery contract traded or executed on an electronic trading facility or any agreement, contract, or transaction that is treated by a derivatives clearing organization, whether registered or not registered, as fungible with a significant price discovery contract; shall keep books and records pertaining to such transactions and positions in such form and manner and for such period as may be required by the Commission; and shall keep such books and records open to inspection by any representative of the Commission or the United States Department of Justice.

The Commodities Exchange Act provides, in pertinent part, Section 2(a)(11).

(11) Seal

The Commission shall have an official seal, which shall be judicially noticed.

The Commodities Exchange Act provides, in pertinent part, Section 8(a)(5).

(5) to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this Act;

The Commodity Futures Trading Commission Act provides, in pertinent part, 7 U.S.C. § 21(b)(h):

(3) (A) Application to the Commission for review, or the institution of review by the

> Commission on its own motion, shall not operate as a stay of such action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments).

The Commodity Futures Trading Commission Act provides, in pertinent part, 7 U.S.C. § 21(i)(4):

(i) Notice; hearing; findings; cancellation, reduction, or remission of penalties; review by court of appeals

(4) Any person aggrieved by a final order of the Commission entered under this subsection may file a petition for review with a United States court of appeals in the same manner as provided in section 9 of this title.

The Commodity Futures Trading Commission Act further provides, in pertinent part, 7 U.S.C. § 9(5):

(5) Subpoena

For the purpose of securing effective enforcement of the provisions of this chapter, for the purpose of any investigation or proceeding under this chapter, and for the purpose of any action taken under section 16(f) of this title, any member of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in paragraph (7)) may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.

The Commodity Futures Trading Commission Act further provides, in pertinent part, 7 U.S.C. § 9(8):

(8) Refusal to obey

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question.

Judiciary and Judicial Procedure, 28 U.S.C. § 1254 (1):

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

The Code of Federal Regulations provides, 17 C.F.R. § 11.4 (b):

> An order of the Commission authorizing one or more members of the Commission or of its staff to issue subpoenas in the course of a particular investigation shall include:

(1) A general description of the scope of the investigation;

(2) The authority under which the investigation is being conducted; and

(3) A designation of the members of the Commission or of its staff authorized by the Commission to issue subpoenas.

The Code of Federal Regulations further provides, 17 C.F.R. § 4.13(a)(2):

(a) A person is not required to register under the Act as a commodity pool operator if:

(2)

(i) None of the pools operated by it has more than 15 participants at any time; and

(ii) The total gross capital contributions it receives for units of participation in all of the pools it operates or that it intends to operate do not in the aggregate exceed $400,000.

(iii) For the purpose of determining eligibility for exemption under paragraph (a)(2) of this section, the person may exclude the following participants and their contributions:

(A) The pool's operator, commodity trading advisor, and the principals thereof;

(B) A child, sibling or parent of any of these participants;

> (C) The spouse of any participant specified in paragraph (a)(2)(iii)(A) or (B) of this section; and
>
> (D) Any relative of a participant specified in paragraph (a)(2)(iii)(A), (B) or (C) of this section, its spouse or a relative of its spouse, who has the same principal residence as such participant;

The Code of Federal Regulations further provides, 17 C.F.R. § 10.41:

Prehearing conferences; procedural matters.

In any proceeding the Administrative Law Judge may direct that one or more conferences be held for the purpose of:

(a) Clarifying issues;

(b) Examining the possibility of obtaining stipulations, admissions of fact and of authenticity or contents of documents;

The Code of Federal Regulations further provides, 17 C.F.R. § 10.68:

Subpoenas.

(a)Application for and issuance of subpoenas -

(2)Application for subpoena duces tecum. An application for a subpoena requiring a person to produce specified documentary or tangible evidence (subpoena duces tecum) at any designated time or place may be made by any party to the Administrative Law Judge. All requests for the issuance of a subpoena duces tecum shall be submitted in duplicate and in writing and shall be served upon all other parties to the proceeding, unless the request is made on the

record at the hearing or the requesting party can demonstrate why, in the interest of fairness or justice, the requirement of a written submission or service on one or more of the other parties is not appropriate. Except in those situations described in paragraph (b) of this section, where additional requirements are set forth, each application for the issuance of a subpoena duces tecum shall contain a statement or showing of general relevance and reasonable scope of the evidence being sought and be accompanied by an original and two copies of the subpoena being requested, which shall describe the documentary or tangible evidence to be subpoenaed with as much particularity as is feasible.

(3)Standards for issuance of subpoena duces tecum. The Administrative Law Judge considering any application for a subpoena duces tecum shall issue the subpoena requested if he is satisfied the application complies with this section and the request is not unreasonable, oppressive, excessive in scope or unduly burdensome. No attempt shall be made to determine the admissibility of evidence in passing upon an application for a subpoena duces tecum and no detailed or burdensome showing shall be required as a condition to the issuance of any subpoena.

(4)Denial of application. In the event the Administrative Law Judge determines that a requested subpoena or any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena, or may issue it only upon such conditions as he determines fairness requires.

The Code of Federal Regulations further provides, 17 C.F.R. § 11.4:

Subpoenas.

(a)Issuance of subpoenas. The Commission or any member of the Commission or of its staff who, by order of the Commission, has been authorized to issue subpoenas in the course of a particular investigation may issue a subpoena directing the person named therein to appear before a designated person at a specified time and place to testify or to produce documentary evidence, or both, relating to any matter under investigation.

(b)Authorization to issue subpoenas. An order of the Commission authorizing one or more members of the Commission or of its staff to issue subpoenas in the course of a particular investigation shall include:

(1) A general description of the scope of the investigation;

(2) The authority under which the investigation is being conducted; and

(3) A designation of the members of the Commission or of its staff authorized by the Commission to issue subpoenas.

(e) Pursuant to the authority granted under Sections 2(a)(11) and 8a(5) of the Act, the Commission hereby delegates to the Director of the Division of Enforcement, with the concurrence of the General Counsel or General Counsel's delegee, and until such time as the Commission orders otherwise,

> the authority to invoke, in case of contumacy by, or refusal to obey a subpoena issued to, any person, the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda and other records pursuant to subpoenas issued in accordance with section 6(c) of the Act for the purpose of securing effective enforcement of the provisions of this Act, for the purpose of any investigation or proceeding under this Act, and for the purpose of any action taken under section 12(f) of the Act.

The National Futures Association Rule 2-5, provides:

> Each Member and Associate shall cooperate promptly and fully with NFA in any NFA investigation, inquiry, audit, examination or proceeding regarding compliance with NFA requirements or any NFA disciplinary or arbitration proceeding. Each Member and Associate shall comply with any order issued by the Executive Committee, the Membership Committee, the Business Conduct Committee, the Appeals Committee or any NFA hearing or arbitration panel.

The National Futures Association Rule 3-14, provides, [in pertinent part]:

(a) Types of Penalties.

The Business Conduct Committee, BCC Panel or Hearing Panel, or the Appeals Committee on appeal or review, may at the conclusion of the disciplinary proceeding impose one or more of the following penalties:

(i) Expulsion, or suspension for a specified period, from NFA membership; a two-thirds vote of the members of the Hearing Panel or the Appeals Committee present and voting shall be required for expulsion. A suspended Member shall be liable for dues and assessments but shall have no membership rights during the suspension period nor shall a suspended Member hold itself out as an NFA Member during the suspension period;

(ii) Bar or suspension for a specified period from association with an NFA Member;

(iii) Censure or reprimand;

(iv) A monetary fine, not to exceed $250,000 per violation;

(v) Order to cease and desist; and

(vi) Any other fitting penalty or remedial action not inconsistent with this rule.

EXCERPTS OF TRANSCRIPT OF NFA HEARING

*** *** ***

[Testimony of Fejokwu]

"Again, recall, I became an NFA member voluntarily when I didn't when I wasn't required to and, frankly, against advice, trying to have this seal of good approval. And I was actually reluctant that I filed this request to withdraw."

*** *** ***

[Testimony of Fejokwu]

"And my registration became effective 2013, even though I did qualify for the 4.13(a) (2) exemption at that point in time."

*** *** ***

[Testimony of Fejokwu]

"So I said, you know what, let me withdraw my registration because I don't have the resources to go get a ... audit. That was the only motivation for me requesting to withdraw from membership on December 24, 2013."

*** *** ***

[Testimony of Fejokwu]

"And it states here in the last paragraph: Mr. Fejokwu is also the founder and chief visionary officer of the Vision New Africa Foundation; this is founded by it's the sister organization of Chazoneering and it's a private, self-funded foundation committed to realizing pan-African socio-economic Renaissance, the New Africa. This, again, is also from 2003. It's a printout, but I can send you the original electronic file. And anyone can confirm to you that that file is dated back as far back as 2003. So, again, more evidence showing that this structure that seems so suspicious has always been my consistent structure from when I had zero to now where I am."

*** *** ***

[Testimony of Fejokwu]

"...I went to the Federal Register to see what does this rule actually say, what other requirements for 4.13(a) (2) ... ."

[Testimony of Fejokwu]

"...as part of my registration requirement, every quarter I meant to submit a PRS form that informs the NFA of current assets, monthly returns, source providers. And I, every quarter, did that."

*** *** ***

[Testimony of Fejokwu]

"So when they now asked for this audit, as he said, why were we doing that? Because they saw losses. The NFA knew of those losses all through 2013. There wasn't any epiphany suddenly March 2014 because every quarter, I submit a report to the NFA. And I always, on time, submitted that report with all the losses. I never for once avoided stating my losses. I never for once misrepresented my losses. I always, every quarter, would report I lost money; I lost money. And every time I did that, I got an email from the NFA asking me questions about my submission and specifically why were there losses? And I always explained to them why there were losses. So Mr. Hirst's assertion that he certainly learned I had losses was a new concern, I must state respectively is incorrect. The NFA was fully aware throughout 2013 that this fund was consistently losing money. There was no mystery there. There was no secret there."

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[Cross examination of NFA witness Arthur Kenigstain – the NFA lead examiner - by NFA attorney Ron Hirst]

Q. Are you familiar with this particular document?

A. Yes. This is the email I sent to Mr. Fejokwu on March 25th, again, thanking him for his time and having the call with us. Also, if you look at the last page, this includes the initial document request list that we did send to Mr. Fejokwu on March 25th requesting certain documents ... .

Q. Okay. So this was sent out following the phone conference; is that correct?
A. Yes.

Q. Okay. And did Mr. Fejokwu respond to this email?
A. Yes, he did. That night, he responded probably within two hours. When we came in the next morning, we had, for the most part, if not all, the documents that we requested on the initial checklist.

Q. Okay. So very promptly he responded to this?
A. Yes, he did.
Q. And to the best that you could determine, his response satisfied all of the specific requests in the document request; is that right?
A. Yes.

*** *** ***

[Testimony of Fejokwu]

"Again, the anxiety of why are these guys on my back? I'm a small, one-man shop managing a tiny fund, ... why all this pressure and scrutiny on me? He said, we'll try and get you ..... the list of documents, tonight.

...by the next morning, I sent them all the documents. Luckily, I had everything on my computer. It took me some time. I had other personal deadlines for other important matters, which I ended up missing, because, at this point, I felt this is a regulator; I don't know what's going on; I need to respond to them; I need to cooperate with them.... They gave me three days. Given that I had a deadline, something very

important to me that was also due March 28th, I could have just said I can't meet that deadline; please give me a week extension, which they probably would have given me. But my sense was these guys are suspicious about something; remember, you're Nigerian; don't give them any excuse to start wondering.

But within two hours that night, I sent them the -- all the items on the request. And I felt everything would be okay at that point."

*** *** ***

[Testimony of Fejokwu speaking to Arthur Kenigstain – the NFA lead examiner – during cross-examination.]

"Because I spoke to Amanda Olear [of the CFTC] and I informed you I spoke to her. And she informed me that she had spoken to you and she will speak to you again. But I spoke to Amanda Olear [of the CFTC] about the foundation of principals, and she informed me she had spoken to you and she will speak to you again."

*** *** ***

[Testimony of Fejokwu.]

"So my first question is, how can I be charged with a Complaint when, prior to this complaint before anything's happened, we had a meeting in my office, in my home office, on April 7th. We had a

disagreement. I sent two follow-up emails that were not responded to. And then I get an email on May 6th telling me to respond to this. I agree to respond to it and ask for an extension. You give it to me. The extension was to a date in June. How then on May 15th can you charge me with a formal Business Committee complaint with not cooperating when f haven't even responded to your last request to me and that deadline had not yet expired? I mean, how does that happen? ... .

So after that -- and I will call the NFA -- I spoke with Ms. Cain. And I said, I just got a letter. I got a letter a week ago from the NFA asking me for a response. I asked for an extension because I'm doing my exams. They gave it to me. So how is a complaint issued in that time frame? Her response was that of surprise, that -- and my suspicion is that there was some miscommunication between Compliance and Legal.

But the point the Hearing Panel should focus on is that how can I be charged with not cooperating, given this history, given my two unreplied emails, given a letter sent to me that I was told to respond to and given an unexpired deadline? How in that period did the NFA go to the Business Committee and claim that I'm not cooperating and then file a complaint?"

*** *** ***

[Testimony of NFA Attorney, Ms. Cain]

"...we called it the peeling back of the layers of an onion, and, unfortunately, that is what it's like."

*** *** ***

"Féjọkwụ controls [Chazoneering] 100 percent."

*** *** ***

[Opening Statement of NFA attorney, Ron Hirst]

"Members of the Panel, my name is Ron Hirst. I am an attorney for NFA, and I'll give hopefully a very brief opening statement. This is not a complicated case. **This is not a sales practice case, a fraud case."**
(emphasis added)

*** *** ***

[Testimony of Fejokwu]

"So the issue here today is that I'm being charged with not cooperating. The record shows that from the moment I got a phone call on March 25th, I was cooperating, giving them documents, printing them, sending them stuff, thinking of what to do to prove and doing all of that.

So I said, not to be seen as ignoring the matter -- I think on April 14th or so, I sent them another email. And I said, I've not heard from you again; I'm telling you my position. And I stated in that email, I'm still willing to cooperate with you and rim also per that email, I'm also willing to discuss with your superiors; I'm also willing to discuss with your legal department.

So I didn't just say, I'm not giving this to you because I believe I have a case and ignored them. Even when I didn't hear from them, I sent them two follow-up

emails saying, what's going on? I would like to meet with you again; I'd like to talk to your superiors, thinking that we'd have some kind of dialogue. Because at that point, I felt that, to be very honest, that we had -- there was just some personal suspicion between myself and them. And I felt if one of the superiors got involved or some person from the legal department got involved, a different set of eyes would help to break the ice.

So I actually proposed that in two follow-up emails saying, let's continue this dialogue. Those two emails went unreplied. Yet, I'm the one being accused of not cooperating."

*** *** ***

[Cross examination of NFA witness Arthur Kenigstain – the NFA lead examiner - by NFA attorney Ron Hirst]

*** *** ***

Q. Okay. So go ahead; I'm sorry.
A. As a result, we requested one of the bank statements for the foundation to determine their source of funding and also the pool's bank accounts to confirm that the subscriptions were indeed received from the foundations.
Q. And did he respond to that request?
A. Yes, he did. He ended up providing us the Barclays account statements for both foundations, which showed, one, their initial endowment and also showed the funding they received for their investment into the feeder fund. What we ended up learning after reviewing those statements that both were either directly or indirectly funded by the entity Chazoneering LLC.

ANSWER TO COMPLAINT:
NFA Case No. 14-BCC-006

1. I hereby issue a full and complete general denial of **ALL** allegations issued in the NFA Complaint issued under NFA Case No. 14-BCC-006.

2. NFA knows fully well, where I can be reached and that the place where business records of CHAZON QTA are kept is my Guttenberg, NJ home-office. Indeed, all documents, all correspondence I receive from the NFA, have always come to this Guttenberg, NJ address. This address is listed in the NFA ORS system and it is from this same system that NFA got the address to use to send me correspondence. Despite NFA having this knowledge, NFA does not call me on my telephone number which they have, or visit the Guttenberg, NJ location which they know of and at which they send me all correspondence, or email me at my email address which they have. Instead, the NFA choses then to "locations" in NY including a location where my lease had ended since 2009, merely to create the false, negative impression as asserted in paragraph 9 of the Compliant, that I have no business location or that I am unreachable or some other negative connotations. This is clearly false. As proof of this, within fifteen or so minutes of receiving an email from them on March 25, 2014 , stating that they "visited [my] office locations [and] were unable to reach [me]"; I immediately called them on the number they provided. If they had visited my only office location – the Guttenberg home-office or emailed or called me as opposed to visiting mystery "office locations" there would be no basis to falsely create the negative impression created in paragraph 9.

3. With respect to paragraph 11, the documents NFA claims they "obtained" are documents I voluntarily provided them in good faith. The trading losses, which they cite in paragraph 11 of the Complaint, are completely non-germane to this matter, as no fund assets are missing or misappropriated. The numerical figures of invested amounts and trading and losses are again completely non-germane to this matter and only mentioned so as to poison the mind of the reader and create a negative impression. This information constitutes confidential information that should be redacted from any public document. In any event, these losses were already previously known to the NFA as the trading losses were reported in each of the fund's quarterly PQR reports that the fund was required to submit to NFA. Furthermore, on at least two occasions, after receiving the PQR reports I filed, the NFA called/emailed me to discuss those losses. I then provided at that time responses to the NFA – which they accepted as satisfactory explanations. So the implication in paragraph 11 that the NFA only suddenly (in March 2014) became aware of losses because they suddenly "obtained" documents is spurious, a lie and grossly misleading.

4. Paragraph 12, again is yet misleading and inaccurate. I filed an exemption request under CFTC Reg. 4.13(a)(2) since Feb 2014. This request and the previous withdrawal request from NFA Membership submitted in December 2013 were not acted upon promptly by the NFA. My repeated request for action on these requests (withdrawal

and exemption) led to rude responses from the NFA and what appeared to me to be punitive actions. There exists documentary evidence of these rude responses, including an email where a rude remark was made about me by an NFA staff member. I discovered this when this email was inadvertently sent to me and I was able to see the comment made about me). These punitive actions included constant referrals to more parties in the NFA and more information requests each time I asked for the status of the withdrawal and exemption requests. When NFA now contacted me on March 25, 2014 and indicated they were performing an exam/audit they indicated that to qualify for the 4.13(a)(2) exemption, I needed to provide proof that the investors in the Fund were truly proprietary. They specifically requested for *:"Personal bank statements or bank statements of other entities you operated, evidencing the funding of VNA & VNN for their contributions to the feeder fund."* I then provided exactly that information on March 27, 2014 by providing the statements of the foundations showing that the two foundations, just as I had represented verbally, received their total endowment solely from CHAZONEERNG my business vehicle. I thought at that point the matter was over as I had provided documentary evidence to confirm my verbal representation, the exam would come to an end, they would accept my withdrawal from NFA membership and make effective my 4.13(a)(2) exemption. To my great and continued shock, the NFA immediately shifted the goal post and now asserted that what they had previously requested i.e. "bank statements of other entities you operated, evidencing the funding of VNA & VNN for their contributions to the feeder

fund." (and which I had duly provided) was no longer sufficient. When I pointed this out to them, they now, incredulously replied on March 27, 2014:

*"However, how are we to know that you are 100% the owner of Chazoneering LLC? That being said, even if you are the 100% owner of Chazoneering LLC, this does **not** prove that you are the sole contributor, owner or beneficiary of these foundations. All this confirms is that Chazoneering funded the foundations investments into the feeder fund. "*

So on March 26th they request for:

""bank statements of other entities you operated, evidencing the funding of VNA & VNN for their contributions to the feeder fund."

Then when on March 27th after I provide **precisely** what **they** requested, they now assert that:

*"this does **not** prove that you are the sole contributor, owner or beneficiary of these foundations."*

Contradictorily, though, they acknowledge in Paragraph 12 of the Complaint that they know that I own and operate CHAZONEERING.

5. They then informed me that they wanted to see bank statements of CHAZONEERING for all periods so as to confirm that all inflows into CHAZONEERING came solely from me; to quote them – to confirm that CHAZONEERING was "solely funded by me". Obviously, this is an impossible request, no bank statement of a business, will show that all inflows came from the owner of the company. Bank statements of Microsoft, will not show inflows "solely" from Bill Gates. Businesses have counterparties and as such have inflows from such counterparties. It was now clear to me that they were determined to

continue to shift the goal posts and make impossible requests all with the aim of preventing me of availing myself of the 4.13(a)(2) exemption.

6. Upon further study of the regulation, it became clear to me that under CFTC Reg. 4.13(a)(2), I could fully qualify for the exemption, if all contributions to the pool came from "principals" of the CPO. Thankfully at the time of establishing the CPO, four years **prior** to this NFA inquiry, the CPO was established with the two foundations as principals of the CPO. I then informed the NFA that the foundations were both principals of the CPO and I was now claiming the exemption 4.13(a)(2) on these grounds. I provided them a revised Exemption document duly signed and evidence that the Foundations were indeed principals of the CPO. I had previously provided evidence by bank statements showing that all contributions to the pool came from the Foundations.

7. Again, I thought the documents provided in point six above and the clear and undeniable fact that I qualified for the exemption on the statutory grounds of all investors being principals as allowed by 4.13(a)(2) would bring the mater to an end. To my great shock, this was not the case. Sadly, when a party is driven by malice, prejudice, a desire to persecute, a desire to witch-hunt and punish - all driven by prejudice and ill-willed prejudgment, nothing will satisfy them until they achieve their perverse end. This is the manner in which the NFA has handled this matter – it is a clear witch-hunt driven by malice, prejudice and a spirit of persecution.

8. Instead, of accepting the facts I had presented in point 6 as documented by documentary evidence, they decided to once again shift the goal post and come up with another ruse to continue their persecution and harassment. The new ruse was that they suspected that CHAZONEERING LLC was involved in the CPO /futures business. They based this erroneous belief on an old fund database listing they found on the Internet. The fact that the website listing clearly showed in bold the word: "**ARCHIVE**" clearly indicating to any objective clear-minded observer that this website listing referred to CHAZONEERING's old ("archived") activity and not current activity was as usual conveniently ignored by them, as this fact did not fit the fable they sought to create. I pointed this out to them, but they insisted and used this spurious website listing as grounds to request for bank statements for CHAZONEERING for the 2013 period. I responded that I felt a request of bank statements of CHAZONEEIRNG were unnecessary and **not within their rights** to request as it was not a NFA member firm, was not active in futures business and even if it was active in futures business how would that necessarily be proven from bank statements. I found the request unduly intrusive and further evidence of a witch-hunt and as such refused to provide them. Indeed , the NFA said to me during that April 7, 2014 meeting and I quote "We have no jurisdiction over your private business (CHAZONEERING)". So why are they requesting for bank statements of CHAZONEERING? Their answer to me was that they *suspect* the entity is involved in futures business. Where in the law does unfounded

suspicion give grounds to make intrusive requests of entities you freely admit you have no jurisdiction over? I find this whole situation incredulous! The onus is not on the accused but on the accuser: *"semper necessitas probandi incumbit ei qui agit"* and *"ei incumbit probatio qui dicit, non qui negat"*. I told the NFA staff that if they did not believe that CHAZONEERING was not in the futures business as I had represented to them, why not contact all their FCMs independently. Actually, one would think that from their perspective this should have been their preferred approach since it was clear they did not believe anything I told them. They responded: "they wanted to come to me first and not bother the FCMS". Reluctantly, but still cooperating in good faith and hoping to bring the matter to an end, I informed them that on an exceptional one-time basis I would provide them those statements. I did send them those bank statements on April 7, 2014 and felt once again that the matter would come to an end. Yet again, I was wrong! NFA now informed me that they wanted bank statements from 2011 for Chazoneering and bank statements for the two foundations from 2011. Their rationale now was that they wanted to make sure there were no contributions to any of these entities that would create a "Principal" relationship of the entity that would require such a party to register with the NFA as a "principal".

9. I found this incredibly shocking and surprising. At this point, I firmly told them I would not provide any more bank statements, as they continued to lie, mislead, deceive me and constantly provide varying ruses as they shifted goalposts all as part

of their witch-hunt. Furthermore, they had no rights to make intrusive requests of me that had no connection to the matter at hand simply because they felt they had "power" to do so. At the same time, I informed them that I remained willing to discuss the matter with them or their superiors further to reach a solution. I never received a reply to that email.

10. Paragraph 13 of the NFA compliant , refers to a "rambling message". There was nothing rambling about the message. What was and is "rambling" is the NFA's actions; jumping from ruse to ruse to make intrusive requests as they fish for non-existent evidence to confirm their malicious, prejudiced , premeditated negative judgment of a **COMPLETLEY INNOCENT man.**

11. Paragraph 14 of the NFA Compliant again misleads. NFA did not suddenly "learn" of my return to New York. I informed them when on the first or second day we spoke on March 25th or 26th, 2014, voluntarily of my return and even told them they were welcome to visit me in my home office at any time of their choosing – **announced or unannounced**.

12. Paragraph 15 is again fully misleading. I fully explained to NFA on April 7th, 2014 hat the LLC Agreement they received form the FCM – ABN AMRO was a draft LLC Agreement I sent to ABN AMRO in error. To prove this I showed them during the meeting my compute hard drive folder showing the history of the LLC agreements. I showed them the files with all the date and time stamps of initial documents in MS Word and

conversion to Acrobat pdf versions. All this I did, immediately during the April7th meeting within two minutes of their raising the issue with me, so that there would be no question of my tampering with the authenticity of the computer files. They saw clearly that I erroneously in 2012 (when ABN Amro requested for the LLC agreement as part of account opening process) converted the draft MS Word version to pdf and sent to them without reviewing that draft to ensure it was the correct final version. I even showed them that I realized this error a few weeks after I sent ABN AMRO the LLC Agreement in 2012 and upon learning of my error, created the proper correct version in PDF of the LLC agreement. The date stamp clearly shows that the correct version of the LLC agreement PDF file was prepared in **2012** (a week or two after sending ABN AMRO the erroneous version) and a full two years prior to NFA contacting me in March 25, 2014. As such there is and can be no question, that there was any post facto action taken on my part as all these files predated the NFA inquiry. I even went further to explain to them, that the draft LLC agreement showing 100% ownership by Chazon New Africa Group was changed to the final version with LIF and VNA as 50% owners on advice of my counsel. My counsel advised that the LLC Agreement should show the underlying owners of the firm and not the holding company ownership for full transparency. The date and time stamps on the computer files of the LLC Agreement were clear for them to see, and since I did not know they were going to ask me of this prior to our meeting, there is no question that I was and am being truthful. They accepted this explanation and confirmed they believed and

understood my explanation of what happened. Therefore, I ask why does NFA introduce this issue in paragraph 15 of their complaint if not so as to try to make a case where none exists and disparage me. They only tangentially in point 16 disclosed partial details of my explanation to them. Here again, one sees a clear attempt by NFA to poison opinions. I will also state here, I am willing to have a computer forensic analyst examine those computer files to confirm that indeed their date and time stamps are accurate and untampered. In any event this is all a moot point, because even if the erroneous LLC Agreement was the actual LLC agreement it still does not change the facts of the matter, that the principals of the firm are myself (LIF) and the two foundations. The correct LLC Agreement only reflects this underlying ownership (in the spirit of transparency) as opposed to showing the holding company as the LLC owner.

13. Paragraphs 17 – 19 of the complaint have been addressed by me in my points 8 and 9 above. It is important note that in paragraphs 17-19 of the NFA complaint the NFA fails to explain their basis for the request of the bank statements and their constantly changing rationale for bank statements to be provided and the various ruses they employed to extract the statements form me. I refer the reader again to my points 8 and 9 above.

14. Paragraph 20 of the NFA complaint is simply shocking and highly indicative of the gross unprofessionalism of the NFA staff. Apparently the NFA Attorney has no facts to make the case that he/she is now forced to make gratuitous, childish, unprofessional, meaningless comments

to pad a complaint that is devoid of any substantive legitimate, meritorious complaint. My signing of my emails (as I have for almost two decades as Chief Chazoneer) is completely non-germane to the matter at hand. It is fully within my prerogative to give myself whatever title I wish and sign my missives as I please. Some companies have their founders with titles like "Chief Yahoo". Therefore, what is so strange in my giving myself a title that it merits inclusion in an NFA complaint. Incredible! It would be amusing that the NFA attorney included this as a full paragraph in a complaint and indicative of the lack of substance to the complaint, but in matters of this nature where the NFA disparages, persecutes innocent parties it is not amusing. It is simply gravely sad that regulators instead of working for the public interest, use their power recklessly.

15. In summary, NFA continues (see paragraph 21 of the NFA complaint) to falsely and misleadingly maintain that they have been unable to verify the principals of the CPO. That is patently false. They further assert that they need bank statements to make that determination. That too is not only false but also absurd, as I show below in points 16 -24.

16. To determine a principal of an entity the NFA & CFTC have a precise definition seen in the NFA Manual at https://www.nfa.futures.org/nfamanual/NFAManual.aspx?RuleID=RULE%20101&Section=8

    Also in the CFTC definition of "principal" in 17 CFR 3.1(a)(2)(ii) . Please see http://www.law.cornell.edu/cfr/text/17/3.1#a or h

ttp://www.ecfr.gov/cgi-bin/text-idx?SID=04da608f06cfb39ff9e5db874d15cbc9&node=17:1.0.1.1.3.1.7.1&rgn=div8

17. Under no reading or interpretation of the statutory definition of principal can it be seen that a bank statement will prove who or not is a "principal".

18. CHAZONEERING is NOT an owner or beneficiary of CQTA, therefore, there **cannot** be any principal relationship arising from indirect ownership of CHAZON QTA through CHAZONEERING.

19. Even if, CHAZONEERING was an owner or beneficiary of CQTA (and it is NOT), validation of ownership of CHAZONEERING will not come by looking at a bank statement but through corporate ownership documents – e.g. LLC agreement, stock certificates, share register.

There is, therefore, absolutely no need to see CHAZONEERING bank statements.

20. I note also that I have already provided NFA documentation to validate ownership of CHAZONEERING and NFA acknowledges that they know that I own CHAZONEERING (point 12 of the NFA complaint).

21. Similarly, CHAZONEERING is NOT an owner or beneficiary of VNA or VNN, therefore, there **cannot** be any principal relationship of CQTA arising from indirect ownership of CHAZON QTA, through ownership of VNA/VNN by CHAZONEERING. **There is, therefore, absolutely no need to see CHAZONEERING bank statements.**

22. There are two owners of CHAZON QTA – VNA and myself. As such, there is only one owner that is a non-individual that needs to be looked through (VNA) to identify ultimate beneficiaries. I have since late March 2014 provided NFA documentation to allow NFA to look through VNA to determine the beneficiary of VNA. The documentation I provided to NFA in that regard, proves that the sole beneficiary of VNA is VNN. I have further provided documentation to allow NFA to look through VNN to determine the beneficiary of VNN. That documentation proves that the sole beneficiary of VNN is the "Public at large" – which is in accordance with tis function as a charitable foundation. **There is, therefore, absolutely no need to see VNA or VNN bank statements.**

23. As such, the **ultimate** beneficiaries of CQTA are known to NFA using the documentation I provided NFA since March 31st. This has proven that there is no party that owns 10% or more of CQTA directly or indirectly. Therefore, NFA ***does*** know ***and has known since March 31, 2014*** ALL principals of CQTA: LIF, VNA, and VNN.

24. The request for bank statements is clearly demonstrated above to be completely unnecessary as (i) bank statements cannot validate ownership of an entity, (ii) all applicable documents to prove the ultimate beneficiaries of CQTA have been provided to NFA since March 31st.

25. NFA is now on this basis charging me with not "cooperating" with them – and as such deem this a violation of Rule 2-5. Sadly, the NFA uses Rule 2-

5 as a "catch-all" tool of persecution. It is certain, that Rule 2-5 was not created to be a prosecutorial weapon of persecution that can be used to create a crime when none exists. Rule 2-5 does not provide carte blanche to intrude and demand irrelevant documents or make intrusive and unnecessary requests. This is simply a matter of both law and principle.

26. In this matter, it is abundantly clear that I have at all times cooperated with NFA. Indeed, the NFA is on record as telling me (and even thanking me) both verbally and in writing for cooperating with their inquiry/exam. This is well documented. In this regard, see in addition to the points above, points 27 - 31 below.

27. On April 8, 2014 I sent an email to the NFA Compliance Department, indicating willingness to discuss with members of the NFA legal team to resolve the matter – and received no reply to this request – this is evidence of NFA NOT cooperating with me, as opposed to me not cooperating with NFA.

28. On April 14, 2014 I sent another email to NFA, wondering why the April 8th email had gone unreplied (and remains unreplied to date), explaining the matter again in tremendous detail, and again requesting for a meeting with NFA compliance staff superiors to resolve the matter, stating in that email, to wit:

"I reiterate that I remain cooperative and will continue to cooperate with you. In my continued spirit of cooperation, so as to bring this matter to a speedy end,

I am more than willing to speak again to your team or any of your superiors."

Yet again, I received no reply to this email or request for a meeting – this is yet again evidence of NFA NOT cooperating with me, as opposed to me not "cooperating" with NFA.

29. On May 6, 2014, I received an email letter from NFA titled: "Closure of Examination" informing me the exam was closed and also asking me to respond by May 20, 2014 indicating how I intended to correct or have corrected issues they discovered during the examination. Yet, NFA went ahead to issue a BCC complaint on May 15, 2014 BEFORE the expiration of the May 20 2014 deadline. This is yet again clear evidence of NFA NOT cooperating with me, as opposed to me not cooperating with NFA, indeed this is evidence of malicious conduct on NFA's part.

30. On May 13, 2014 I informed the NFA Compliance department, that I would reply to the May 6, 2014 letter as requested but needed more time due to pressing personal matters (details of which I provided to the NFA); and as such I requested from NFA an extension of the May 20 deadline. I received on that same May 13, 2014 an extension to June 9, 2014. Yet NFA issues a BCC complaint on May 15, 2014 BEFORE the expiration of the first May 20, 2014 deadline or the new June 9, 2014 deadline. This is clear evidence again of NFA NOT cooperating with me, as opposed to me not cooperating with NFA, indeed this is evidence of malicious conduct on NFA's part.

31. Given all of the above points, the NFA's Business Conduct Committee ("BCC" complaint should **not at all** have been issued, was issued maliciously and unjustly; and I strongly suspect the BCC was not informed or aware of the facts above. Therefore, the NFA's BCC complaint should, be immediately withdrawn and should also be immediately removed from the NFA website and my BASIC record.

32. It is also clear that the NFA Legal department was **not** fully informed of all details by the NFA Compliance department and in turn, the NFA's BCC was also not fully informed of all pertinent facts. The NFA BCC should thus not have issued a Complaint given that they were not fully informed of all facts of the matter. In discussing with Cynthia Ionnacci of the NFA Legal Department on May 15, 2014, she made it clear that she and the BCC were **not** aware that the Compliance department had issued a "Closure of Exam" letter to me and had closed the exam via letter of May 6, 2014. Indeed, Ms. Ionnacci expressed great surprise and disappointment when I brought to her attention. Why then should a BCC complaint be issued when the BCC (and apparently the Legal Department) was not presented with all the pertinent facts? That is clearly unjust.

33. Furthermore, the BCC was also not made aware, or so it seems, that contrary to the false allegations that I was "not cooperating", I was repeatedly reaching out to the NFA providing information and documents. The BCC was not made aware that it was the NFA ***not*** me who refused to reply or

engage with me or cooperate with me. Indeed, my email of April 14, 201 reiterated my full cooperation and willingness to speak by meeting or conference call. This email was never replied by the NFA.

34. I also strongly suspect, that several pertinent facts of the matter were ***not*** presented to the BCC. This is clear from the complaint. It is a clear malicious, rush to judgment, based on a biased pre-judgment by the NFA Compliance and Legal Departments.

35. An objective observer, would conclude, that it does seem the BCC Complaint was frankly obtained under false pretenses with the BCC not being made aware of the full facts of the matter. **If the prosecution (in this case, the NFA Legal Department) does not provide all pertinent information to the grand jury (the BCC) then that indictment (Complaint) should be voided.** This is the basis of my request for the Complaint to be withdrawn – especially as it contains unnecessary private information (and does so inexplicably, with no redaction whatsoever) and disparages me for no just cause.

36. My position is simple as summarized in the points below:

37. I have **ABSOLUTELY** committed **NO** offense whatsoever. To the contrary, NFA has to my continued bewilderment, been acting in bad faith, based on a biased pre-judgment and is now disparaging me.

38. I fully cooperated with the NFA and indeed NFA is on record verbally and in writing confirming that I ***did*** cooperate.

39. The bank records NFA requests of non-NFA member firms**, cannot "validate the owners" of the NFA member firm. I have already **fully** by provision of pertinent corporate documents, validated the ownership of the NFA member firm-CHAZON QTA, the CPO. **All owners and ultimate beneficial owners/beneficiaries of the firm have been made known to NFA since March 2014.**

    ** I note also that the bank statements of the NFA member firm – CHAZON QTA **have been provided** to the NFA (since March) and in addition, I provided NFA authorization to independently confirm those bank statements directly with the bank.

40. After providing documents to confirm the ownership of the firm CHAZON QTA, NFA then shifted the goalpost and told me, they wanted to ensure that CHAZONEERING was not involved in the "futures business" and hence wished to see bank statements to confirm that. I responded that banks statements for CHAZONEERING seemed to be an overly intrusive request as CHAZONEERING is not a NFA member firm. They (NFA Compliance staff), then said that they "had no business with my private business " i.e. no jurisdiction over my private business – CHAZONEERING – a non-NFA member firm. However, they suspected that CHAZONEERING was involved in futures business and wished to

verify if this was true. When I wondered, why and how bank statements could confirm activity in "futures business", they said they would look in the bank statements for activity with FCMs. I responded to them that since virtually all of my representations to the NFA in this matter have not been believed, that I recommended they use their powers to directly contact their FCMs. I told them that would be the best way to confirm/disprove their suspicions – and would enable them do so independently from a source they trusted - their FCMs. I further stated that I was 100% certain that all their FCMs would advise NFA that CHAZONEERING is not in the futures business. The NFA staff responded: "Well, we like to come to the firm first before going to their FCMs". Foolishly, trusting the NFA Compliance staff, and wising to demonstrate my continued good faith actions, even though I felt on principle, it was an intrusive request with no justification, I on the same day, reluctantly, provided bank statements for CHAZONEERNG for the period they requested. I was so certain, that with that submission, the matter would finally come to an end.

41. To my great shock (but in hindsight, this was the typical fashion of the NFA Compliance department and it should not have surprised me***), after they received these statements, and not seeing any "futures business activity", they yet again, for the third or fourth time shifted the goalposts. They now indicated they needed more bank statements not for confirmation of "futures business activity" but now to determine if there was any party that should be registered as a "principal" of the

firm. To this I responded, that bank statements cannot verify principal status. At no point, prior to this time, was the issue of validating owners" even raised with me – and why would it – when I had already provided evidence of the firm's ownership to the NFA Compliance department.

*** I note also that prior to providing statements for CHAZONEERING in April (in connection with the "futures business activity" ruse) , **I did indeed provide bank statements for the two foundations** (which frankly, on principle, I should not have). – Here too, once NFA Compliance Staff received it – they shifted the goalpost and asked for something else – the CHAZONEERING statements - using the ruse of "futures business activity" as their justification.

42. I have listed ALL parties that are principals of the firm/CPO – myself and the two charitable foundations, with the NFA. There are NO other individuals or entities involved in the firm. This is fully confirmed by documentary evidence long since provided to NFA. This verbal and written representation of mine has been repeatedly made to NFA **AND** I have also provided documentary evidence to confirm ALL **ultimate beneficiary owners/beneficiaries or principals of the firm**. The definition of "principal" in the CFTC regulations [17 CFR 3.1(a)] is clear and under NO interpretation of that definition can it be alleged that all owners of the firm are not known to NFA. As I stated in point 39 above, all owners of the firm have been fully disclosed and validated by documentation I have since provided to NFA. As such, there are no mystery principals who have not

been listed with NFA. As I continue to wonder, why would I ***not*** list a principal?

43. To conclude, I reiterate, the documents I have provided are more than sufficient to confirm all ultimate beneficial owners/beneficiaries of the firm – CHAZON QTA. **Furthermore, nowhere in the definition of principal in the CFTC regulations, is a bank statement evidence of ownership. In addition, nowhere in the law, nowhere in legal or corporate precedent can a bank statement be used as evidence of ownership or "principal" status**.

44. Finally, it is very important to note that in the cash testing and other elements of the NFA exam, no funds of the pools were found missing, no funds of the pools found to have been misappropriated, no performance data/returns of the fund found to be misstated. Despite the funds going through a severe drawdown, I continued to consistently, and honestly disclose all losses accurately).

45. Simply put, the activities the CPO have not put any outside party whatsoever at any risk, have caused no harm to any outside party and **have simply done nothing wrong whatsoever**. While it is sad that the Fund suffered a drawdown, business setbacks are in themselves NEVER criminal.

46. The NFA Manager Arthur Kenigstain told me on April 7th after our meeting that the NFA is a private entity and not a government entity. He said he wished they were a government entity so they could have more "power' and greater

jurisdiction. I found that comment chilling and alarming. Is the function of the NFA to have endless power and jurisdiction to persecute and terrorize and engage in witch-hunts with no use of good judgment and discretion or is their function to protect the public? Given my experience, it is VERY sad that instead of serving the public, the NFA wastes precious resources witch-hunting small one-man shops like myself that are working hard and honestly to advance their enterprise. Perversely, in witch-hunting me they have actually not served the public's interest as resources could have been used for other legitimate cases and worse they have distracted me and as such caused my firm adverse harm and injury in addition to reputational damage and disparagement. **I will seek full redress for this harm done to me.**

47. On principle, I will not allow any power hungry regulator to feel they have the right to intrude into all elements of my life because they feel they have "power". I also recall and note here, that in typical NFA misleading fashion, the NFA attempted to obtain from CHASE bank my personal bank statements without permission from me. They did this despite my explicitly telling them I was not giving them such permission and their agreeing that they would not intrude and request for my personal bank statements. Yet, they still went behind my back to attempt to access such personal bank statements. I continue to wonder what in the world are they looking for?! This dishonest act of the NFA staff was confirmed to me directly by the service provider (Confirmation.com) that provides electronic confirmation of bank statements. It is a

complete travesty, the abuse of power the NFA has been engaged in. I will not allow my good name to be disparaged without seeking redress for such.

48. **FINAL PRAYER:**

a. I pray the NFA BCC Committee or other relevant NFA party will dismiss this spurious case/complaint.

b. The NFA should take immediate steps to reverse the public disparagement caused by me by posting of these documents on a public website (with no attempt at redaction whatsoever). This complaint and this answer should be immediately removed from the NFA website.

c. My voluntarily withdrawal from NFA membership submitted in December 2013 should be immediately accepted and my voluntary withdrawal made complete without prejudice to future re-registration.

d. My 4.13(a)(2) exemption filed since February and March 2014 should be immediately accepted and made effective.

49. I am fully innocent and I am fully prepared to pursue all means to defend myself and fully clear my good name. I will pursue this to the highest levels of justice, if need be.

Response of NFA to Motion for Reconsideration

*** *** ***

"Chazon and Fejokwu also argue that they were denied due process because NFA filed its Complaint prior to the time they were given to answer the exam report and explain what corrective action they had taken. It is difficult to discern how these circumstances supposedly denied Chazon and Fejokwu due process."

Excerpt of Petitioner's Motion for Reconsideration by CFTC

*** *** ***

"The timeline above which the NFA has not disputed, shows that my right to respond to the NFA Notice was not upheld. If I had not replied to the Notice, by the June 9, 2014 deadline set by the NFA, **then and only then,** could the NFA have alleged that I had "failed to cooperate". The NFA process requires that NFA turn cases over to the NFA's Business Conduct Committee ("BCC") for possible complaints to be issued *after* an examination is concluded. An examination cannot be considered concluded if the deadline provided in the Conclusion of Examination Notice for me to respond has not yet expired. NF A's filing of the Complaint alleging a "failure to cooperate" was both premature and a violation of my due process rights."

*** *** ***

The NFA can then independently authenticate the "unauthenticated email"; or instruct me as to how I should authenticate the "unauthenticated email"; or instruct me to provide them the bank statement in a form they request. I am more than happy to fully cooperate in this regard not only to fulfill my regulatory responsibilities but also so that all parties can know that there was no impropriety in the bank statements - this is also critically important to me for the sake of my name - so that the unfortunate misimpression that has been created can be debunked.

*** *** ***

I must also highlight that, on my own volition, on multiple occasions during this CFTC appeal process - in December 2015 and on several occasions in 2016 - I requested my counsel at the time, J.B. Koch to inform the NFA, that I was happy to have the NFA authenticate the email and/or allow me provide the NFA the bank statements in whatever form they required in order to speedily resolve/settle the case. To my great surprise, I was told the NFA refused this good-faith proposal.
(emphasis in original)