

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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9:22 am, Mar 21, 2023

In the Matter of:

DARMA, LLC,

Respondent.

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) **CFTC Docket No. 23-07**
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**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from in or about February 2019 to at least September 2020 (“Relevant Period”), DARMA, LLC (“Respondent”) violated current Commission Regulations (“Regulations”) 4.7(b)(3) and (4) and 166.3, 17 C.F.R. §§ 4.7(b)(3), (4), 166.3 (2022), and prior Regulation 4.7(b)(2) and (3), 17 C.F.R. § 4.7(b)(2), (3) (2018).¹ Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.²

¹ Regulation 4.7(b)(3) and (4), 17 C.F.R. § 4.7(b)(3), (4), establish periodic and annual reporting requirements for exempt pools. Prior to January 9, 2020, these requirements were found at Regulation 4.7(b)(2) and (3), 17 C.F.R. § 4.7(b)(2), (3). These requirements did not change in substance when they were renumbered in January 2020.

² Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Respondent, a registered Commodity Pool Operator (“CPO”) and Commodity Trading Advisor (“CTA”), failed to diligently supervise its fund administrator’s activities, which resulted in Respondent failing to accurately prepare and distribute required pool statements to pool participants (“Pool Statements”) in a timely manner. Respondent also failed to file its annual audited pool financial statement (“Annual Financial Statement”) with the National Futures Association (“NFA”) in a timely manner. By its actions, Respondent violated its supervisory obligations under Regulation 166.3, 17 C.F.R. § 166.3 (2022), its obligation to timely prepare and distribute Pool Statements to its participants no less frequently than quarterly within 30 calendar days after the end of the reporting period (“Regulatory Deadline”) under Regulation 4.7(b)(3), 17 C.F.R. §4.7(b)(3) (2022), and Regulation 4.7(b)(2), 17 C.F.R. §4.7(b)(2) (2018); and its obligation to timely file its Annual Financial Statement with the NFA within 90 days after the end of the pool’s fiscal year under Regulation 4.7(b)(4), 17 C.F.R. § 4.7(b)(4)(2022), and Regulation 4.7(b)(3), 17 C.F.R. § 4.7(b)(3) (2018).

In accepting Respondent’s Offer, the Commission recognizes the substantial cooperation of DARMA, LLC with the Division of Enforcement’s investigation of this matter. The Commission also acknowledges Respondent’s representations concerning its remediation in connection with this matter. The Commission’s recognition is reflected in the form of a reduced penalty.

B. RESPONDENT

DARMA, LLC. DARMA, LLC is a limited liability company located in Dorado, Puerto Rico. DARMA, LLC operates two Regulation 4.7 exempt commodity pools, DARMA Capital Master Fund LP (“Master Fund”) and DARMA Onshore Feeder LP (“Onshore Feeder Fund”). DARMA, LLC has been registered with the Commission as a CPO and CTA since September 2018.

C. FACTS

Respondent operates exempt commodity pools under Regulation 4.7—the Master Fund and the Onshore Feeder Fund—both of which traded digital asset commodities consisting of Bitcoin and Ether.³ In November 2018, DARMA hired Administrator A as its third-party fund administrator. DARMA relied on Administrator A to accurately and timely calculate the pools’

proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

³ Regulation 4.7 provides relief from certain reporting requirements of the Act if the pool participants are qualified eligible persons (“QEPs”) as defined by Regulation 4.7(a)(2) and (a)(3). DARMA filed for a 4.7 exemption representing to the Commission that its pool participants were QEPs and was granted an exemption under 4.7.

net asset value (“NAV”), which was a necessary component of the Pool Statements that Respondent was required to prepare and distribute to pool participants. Notwithstanding the Regulatory Deadline set forth in Regulations 4.7(b)(3), 17 C.F.R. § 4.7(b)(3) (2022), and 4.7(b)(2), 17 C.F.R. § 4.7(b)(2) (2018), Respondent represented to pool participants that the Pool Statements were targeted to be distributed two weeks after the end of the prior month (“Monthly Target Date”).

Administrator A was consistently late in providing the NAV calculations to Respondent throughout the Relevant Period and when provided, the calculations were often inaccurate resulting in the preparation of inaccurate Pool Statements. In turn, the Pool Statements not only failed to be distributed to participants by the Monthly Target Date, but they were consistently distributed well past the Regulatory Deadline and in many instances needed to be revised and/or restated.

For example, on or about May 2019, Respondent learned that Administrator A’s accounting systems only tracked fiat currencies, not Bitcoin or Ether, and in order to do the required calculations, Administrator A would have to convert the virtual currencies into its U.S. dollar equivalents. Administrator A failed to accurately do these conversions, resulting in errors in its NAV calculations. This issue only came to light when a pool participant questioned the accuracy of a Statement that they received. Respondent later learned that Administrator A also failed to properly record payments made to Respondent for fees and expenses, excluded certain transactions from its calculations, and improperly reconciled account balances. These issues affected both the accuracy and timeliness of the distribution of Pool Statements to participants, causing them to be chronically late and well past the Regulatory Deadlines throughout the Relevant Period.

Despite these issues, Respondent did not begin the process of hiring a new fund administrator until November 2019, and did not end its relationship with Administrator A until March 2020, almost 13 months after it first became aware of Administrator A’s lateness in preparing the first Pool Statement for January 2019, and ten months after it first became aware of Administrator A’s inaccuracy. Accordingly, Respondent failed to establish and implement an adequate supervisory system, through policies and procedures, to diligently supervise Administrator A and thereby ensure Pool Statements were accurately prepared and distributed to pool participants in a timely manner.

Respondent also failed to file its Annual Financial Statement in a timely manner. As part of its duties as fund administrator, Administrator A was to prepare its Annual Financial Statement. The Annual Financial Statement was originally due March 31, 2020. Respondent first sought an extension from the NFA to file the Annual Financial Statement on April 28, 2020, almost 30 days after it was due. The NFA granted an extension to Respondent to file the Annual Financial Statement by June 30, 2020. Respondent, however, filed the Annual Financial Statement on September 4, 2020, more than two months past the extended filing date. Respondent again failed to establish and implement policies and procedures to ensure that the Annual Financial Statement was timely filed.

Respondent cooperated with Division staff throughout its investigation, expending significant time and resources to voluntarily provide Division staff with specific and complete

information relevant to the Division's investigation. Respondent promptly met with Division staff on numerous occasions to review, explain and clarify the known facts about the misconduct. Respondent provided Division staff with a written chronology of events which included details regarding Respondent's interactions with Administrator A and explanations as to when and why the Pool Statements were late and/or inaccurate. Respondent acknowledged its violative conduct and Respondent's substantial cooperation resulted in material assistance to the Commission's investigation and served to limit the time and resources expended by Division staff to investigate this matter.

In addition to cooperation, Respondent also remediated. Respondent made the following representations concerning its remediation in connection with this matter:

- On January 20, 2020, Respondent signed a letter of engagement with Administrator B to oversee, review and correct, where necessary, all of the work conducted by Administrator A;
- In mid-to late March 2020, Administrator B reviewed all of the work of Administrator A and in April 2020, Respondent and Administrator B consulted with Respondent's auditors to discuss the findings of Administrator B;
- Respondent actively engaged with Administrator B and its auditors to identify and correct all known errors;
- On April 30, 2020, Respondent requested that Administrator B reprocess and restate all of the incorrect NAV Calculations and Pool Reports and Administrator B completed this work by the end of June 2020;
- Since the end of August 2020, Administrator B has accurately and timely prepared NAV calculations and Pool Reports by the end of each month; and
- Respondent kept all of its investors informed of the inaccurate Pool Reports prepared by Administrator A and by July 21, 2020, Respondent redeemed all of its investors' interests, except that of one remaining partner of Respondent.

III. LEGAL DISCUSSION

A. Failure to Provide Timely Pool Statements

Regulation 4.7(b)(3), 17 C.F.R. § 4.7(b)(3) (2022), requires, and Regulation 4.7(b)(2), 17 C.F.R. § 4.7(b)(2) (2018), required, an exempt CPO to distribute a statement, at least quarterly, to all pool participants within 30 calendar days after the last date of the applicable reporting period. This Pool Statement must be presented and computed in accordance with generally accepted accounting principles and indicate: (i) the NAV of the exempt pool as of the end of the reporting period; (ii) the change in NAV from the end of the previous reporting period; and (iii) either the NAV per outstanding participation unit in the exempt pool as of the end of the reporting period, or the total value of the participant's interest or share in the exempt pool as of the end of the reporting period.

During the Relevant Period, Respondent failed to distribute required quarterly Pool Statements to its pool participants by the Regulatory Deadline in violation of Regulations 4.7(b)(3) (2022) and 4.7(b)(2) (2018).

B. Failure to File Timely Annual Report

Regulation 4.7(b)(4), 17 C.F.R. § 4.7(b)(4) (2022), requires, and Regulation 4.7(b)(3), 17 C.F.R. § 4.7(b)(3) (2018), required, an exempt CPO to electronically file with the NFA and distribute to each pool participant an annual report that contains, at a minimum, certain financial information within 90 days after the end of the exempt pools' fiscal year.

For the fiscal year 2019, Respondent failed to timely file its Annual Financial Statement with the NFA in violation of Regulations 4.7(b)(4) (2022) and 4.7(b)(3) (2018).

C. Failure to Supervise Third Party Fund Administrator

Regulation 166.3, 17 C.F.R. § 166.3 (2022), requires that every Commission registrant “diligently supervise the handling by its partners, officers, employees and agents” of all activities relating to its business as a registrant. *See In re FCStone, LLC*, CFTC No. 15-21, 2015 WL 2066891, at *2 (May 1, 2015) (consent order). A violation of Regulation 166.3 is demonstrated by showing either that: (1) the registrant’s supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *In re Gain Capital Group, LLC*, CFTC No. 20-70, 2020 WL 5876729, at *3 (Sept. 29, 2020) (citing *In re Murlas Commodities*, CFTC No. 85-29, 1995 WL 523563, at *9 (Sept. 1, 1995)); *In re GNP Commodities, Inc.*, CFTC No. 89-1, 1992 WL 201158, at *17-19 (Aug. 11, 1992) (providing that, even if an adequate supervisory system is in place, Regulation 166.3 can still be violated if the supervisory system is not diligently administered); see also *In re Rosenthal Collins Grp., LLC*, CFTC No. 12-18, 2012 WL 1242406, at *6 (Apr. 12, 2012) (consent order) (respondent failed to perform supervisory duties diligently by not following its compliance procedures that were in place). Moreover, a violation of Regulation 166.3 is an independent violation for which no underlying violation is necessary. *See In re Collins*, CFTC No. 94-13, 1997 WL 761927, at *10 (Dec. 10, 1997).

A CPO may delegate the performance of certain services to a fund administrator, including those services delegated by DARMA in this case. *See In re Tillage Commodities, LLC*, CFTC No. 17-27, 2017 WL 4386853 at *3 (Sept. 28, 2017). However, it cannot abdicate its responsibilities under Regulation 166.3 and must diligently supervise the agent administrator’s handling of all activities relating to the CPO's business as a Commission registrant. *Id.* at *3; *See, e.g.*, Regulation 4.7(b)(6)(D)(2), 17 C.F.R. §4.7(b)(6)(D)(2) (2022).

Respondent failed to establish and implement an adequate supervisory system through policies and procedures with respect to Respondent’s reporting obligations. Due to these failures, Pool Statements were inaccurately prepared and distributed to pool participants after the Regulatory Deadline. Respondent also failed to establish and implement policies and procedures to ensure that the Annual Financial Statement was prepared accurately and was timely filed with the NFA.

During the Relevant Period, Respondent failed to failed to diligently supervise its agent fund administrator’s activities in violation of Regulation 166.3.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, DARMA, LLC violated Regulations 4.7(b)(3) and (4), and 166.3, 17 C.F.R. §§ 4.7(b)(3), (4), 166.3 (2022), and Regulation 4.7(b)(2) and (3), 17 C.F.R. § 4.7(b)(2), (3) (2018).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 - 1. The filing and service of a complaint and notice of hearing;
 - 2. A hearing;
 - 3. All post-hearing procedures;
 - 4. Judicial review by any court;
 - 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 - 6. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2022), relating to, or arising from, this proceeding;
 - 7. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
 - 8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer; and

- E. Consents, solely on the basis of the Offer, to the Commission’s entry of this Order that:
1. Makes findings by the Commission that Respondent violated Regulations 4.7(b)(3) and (4) and 166.3, 17 C.F.R. §§ 4.7(b)(3), (4), 166.3 (2022), and Regulation 4.7(b)(2) and (3), 17 C.F.R. § 4.7(b)(2), (3) (2018);
 2. Orders Respondent to cease and desist from violating Regulations 4.7(b)(3) and (4) and 166.3.
 3. Orders Respondent to pay a civil monetary penalty in the amount of one hundred fifty thousand dollars (\$150,000), plus any post-judgment interest; and
 4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Regulations 4.7(b)(3) and (4) and 166.3, 17 C.F.R. §§ 4.7(b)(3), (4), 166.3 (2022).
- B. Respondent shall pay a civil monetary penalty in the amount of one hundred fifty thousand dollars (\$150,000) (“CMP Obligation”).⁴ If the CMP Obligation is not paid immediately in full, then post-judgment interest shall accrue on the unpaid portion of the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Respondent shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-amz-ar-cftc@faa.gov

⁴ Respondent reached a prior settlement with the NFA based on the conduct described in this Order and paid a \$30,000 penalty. *See* NFA Case No. 20-BCC-014.

If payment is to be made by electronic funds transfer, Respondent shall contact Tonia King or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581 and to Manal Sultan, Deputy Director, Division of Enforcement, Commodity Futures Trading Commission, 290 Broadway, 6th Floor, New York, NY 10007.

C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

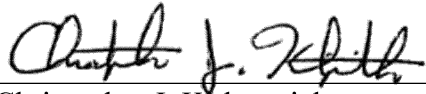
1. **Public Statements:** Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.
2. **Partial Satisfaction:** Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
3. **Change of Address/Phone:** Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.
4. Until such time as Respondent satisfies in full its CMP Obligation, upon the commencement by or against Respondent of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Respondent's debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership, bankruptcy or other proceedings, shall be sent to the address below:

Secretary of the Commission
Office of the General Counsel

Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

The provisions of this Order shall be effective as of this date.

By the Commission.



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

Dated: March 21, 2023