

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): March 26, 2024

AFC GAMMA, INC.
(Exact name of Registrant as Specified in Its Charter)

Maryland
(State or Other Jurisdiction
of Incorporation)

001-39995
(Commission
File Number)

85-1807125
(IRS Employer
Identification No.)

525 Okeechobee Blvd., Suite 1650
West Palm Beach, FL, 33401
(Address of principal executive offices, including zip code)

561-510-2390
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instructions A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	AFCG	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement

On March 26, 2024, AFC Gamma, Inc., a Maryland corporation (the “Company”) entered into an amendment (the “Amendment”) to the Loan and Security Agreement, dated as of April 29, 2022, by and among the lenders party thereto and the lead arranger, bookrunner and administrative agent party thereto. The Amendment, among other things, expands the borrowing base to include funds maintained in a borrowing base cash account.

The foregoing description of the Amendment is qualified in its entirety by reference to the full text of the Amendment, which is filed as Exhibit 10.1 hereto and is incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
10.7A	Amendment Number One to Loan and Security Agreement, dated as of March 26, 2024, by and among AFC Gamma, Inc., the lenders party thereto, and the lead arranger, bookrunner and administrative agent party thereto.
104	Cover Page Interactive Data File (embedded within the Inline XBRL Document)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

AFC GAMMA, INC.

By: /s/ Brandon Hetzel
Brandon Hetzel
Chief Financial Officer and Treasurer

Date: March 29, 2024

* CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED. [***] INDICATES THAT INFORMATION HAS BEEN REDACTED.

AMENDMENT NUMBER ONE TO LOAN AND SECURITY AGREEMENT

This Amendment Number One to Loan and Security Agreement (this "Amendment") is entered into as of March 26, 2024 (the "First Amendment Effective Date"), by and among the lenders identified on the signature pages hereof (such lenders, together with their respective successors and permitted assigns, are referred to hereinafter each individually as a "Lender" and collectively as the "Lenders"), **East West Bank**, administrative agent for each member of the Lender Group and the Bank Product Providers (in such capacity, together with its successors and assigns in such capacity, "Agent"), as lead arranger (in such capacity, together with its successors and assigns in such capacity, the "Lead Arranger"), and as book runner (in such capacity, together with its successors and assigns in such capacity, the "Book Runner"), and AFC GAMMA, INC., a Maryland corporation ("Borrower"), in light of the following:

- A. Agent, the Lenders, the Lead Arranger, the Book Runner and Borrower have previously entered into that certain Loan and Security Agreement, dated as of April 29, 2022 (as amended, restated or otherwise modified from time to time, the "Agreement"); and
- B. In accordance with Section 10.1 of the Agreement, Agent, the Lenders (which shall constitute the Supermajority Lenders), and Borrower have agreed to amend the Agreement set forth herein.

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Agent, the Lenders, and Borrower hereby agree as follows as of the First Amendment Effective Date:

1. **DEFINITIONS.** All initially capitalized terms used in this Amendment shall have the meanings given to them in the Agreement unless specifically defined herein.

2. AMENDMENTS.

(a) The definitions of Borrowing Base and Eligible Loan Receivable in Section 1.1 of the Agreement are hereby amended and restated in their entirety to read as follows:

“Borrowing Base” means, as of any date of determination, the result of:

- (a) 50% of the Borrower Pro Rata Hold of the outstanding principal balance of loans under the Eligible Obligor Loan Receivables, plus
 - (b) 100% of the funds maintained in the Borrowing Base Cash Account, minus
 - (c) the aggregate amount of any issue discounts, syndication discounts, or any other discounts in respect of the Borrower Pro Rata Hold under the Eligible Obligor Loan Receivables; minus
 - (d) the amount of any loss reserves established by Borrower in respect of the Eligible Obligor Loan Receivables; minus
-

(e) the aggregate amount of reserves, if any, established by Agent from time to time under Section 2.1(c) of this Agreement.

'Eligible Obligor Loan Receivable' means those Obligor Loan Receivables as of the Closing Date set forth on Schedule E-1 and additional Obligor Loan Receivables and that comply in all material respects with the representations and warranties made by Borrower to the Lender Group in the Loan Documents respecting the Eligible Obligor Loan Receivables and are otherwise acceptable to the Agent in its sole discretion as of the date of their initial inclusion in the Borrowing Base by the Borrower and are added to Schedule E-1 by amendment; provided that if any Triggering Event occurs with respect to any Eligible Obligor Loan Receivable, the Agent may, in its sole discretion, deem such Obligor Loan Receivable to be ineligible and exclude such Obligor Loan Receivable from the calculation of the Borrowing Base hereunder.

(b) Section 1.1 of the Agreement is hereby amended by adding the following definitions in the appropriate alphabetical order:

“Borrowing Base Cash Account' means a blocked account maintained at EWB in which the Borrower may deposit funds but may only withdraw funds with Agent's prior written consent.”

(c) Schedule E-1 to the Agreement is hereby amended and replaced with the Schedule E-1 attached to this Amendment.

3. **REPRESENTATIONS AND WARRANTIES.**

(a) Borrower hereby affirms to Agent and the Lenders that all its representations and warranties set forth in the Loan Documents, after giving effect to this Amendment, are true, complete and accurate in all material respects except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof as of the date hereof (except to the extent that such representations and warranties relate solely to an earlier date).

(b) Borrower represents and warrants as of the date hereof (i) it has the requisite corporate power and authority to execute and deliver this Amendment, and to perform its obligations hereunder and under the Loan Documents (as amended hereby) to which it is a party and (ii) the execution, delivery and performance by Borrower of this Amendment have been duly approved by all necessary corporate action and does not (A) violate any material provision of federal, state, or local law or regulation applicable to Borrower or its Subsidiaries or (B) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any Material Contract of Borrower or its Subsidiaries except to the extent that any such conflict, breach or default could not individually or in the aggregate reasonably be expected to have a Material Adverse Change.

(c) Borrower represents and warrants as of the date hereof that this Amendment (i) has been duly executed and delivered by Borrower, (ii) is the legal, valid and binding obligation of Borrower, enforceable against such Borrower in accordance with its terms, and is in full force and effect, except to the extent that (A) the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights or general principles of equity or (B) the availability of the remedies of specific performance or injunctive relief are subject to the discretion of the court before which any proceeding therefor may be brought, and (iii) does not and will not violate any material provision of the Governing Documents of Borrower or its Subsidiaries.

4. **NO DEFAULTS.** Borrower hereby affirms to Agent and the Lenders that no Default or Event of Default has occurred and is continuing as of the date hereof.

5. **CONSENT TO DELAY JOINDER OF CRE SOUTH, LLC.** CRE South LLC (“CRE”) is a Subsidiary of Borrower. Borrower expects that CRE will cease to be an Immaterial Subsidiary on or after the First Amendment Effective Date. Pursuant to Section 6.11 of the Agreement, CRE is required to become a Guarantor upon it ceasing to be an Immaterial Subsidiary. Borrower has requested that the Agent and the Lenders agree and consent to delay the joinder of CRE as a Guarantor until August 1, 2024 (the “Joinder Delay”). Effective solely upon the satisfaction of each of the conditions precedent set forth in Section 6 below and notwithstanding anything in the Agreement or any other Loan Documents to the contrary, Agent and the Lenders hereby agree and consent to the Joinder Delay. It being understood and agreed that if on August 1, 2024, CRE is not an Immaterial Subsidiary, then Borrower, on that date (unless otherwise agreed by Agent in writing) and not within 30 days of that date, shall satisfy or shall cause to be satisfied all the conditions set forth in Section 6.11 of the Agreement (unless any condition is waived by Agent in writing). The consent contained in this Section 3: (1) shall only be relied upon and used for the specific purpose set forth herein, (2) shall not constitute nor be deemed to constitute a waiver of (a) any Default or Event of Default or (b) any term or condition of the Agreement and the other Loan Documents, (3) shall not constitute nor be deemed to constitute a consent by the Agent or any Lender to anything other than the specific purpose set forth herein and (4) shall not constitute a custom or course of dealing among the parties hereto.

6. **CONDITIONS PRECEDENT.** The effectiveness of this Amendment is expressly conditioned upon the following conditions precedent:

- (a) receipt by Agent of a fully executed copy of this Amendment in form and substance satisfactory to Agent;
- (b) Borrower shall have opened the Borrowing Base Cash Account; and
- (c) Borrower shall have delivered to Agent the Control Agreement in respect of the Borrowing Base Cash Account.

7. **ACKNOWLEDGEMENT.** Borrower hereby acknowledges and reaffirms (a) all of its obligations and duties under the Loan Documents, and (b) that Agent, for the ratable benefit of the Lender Group, has and shall continue to have valid, perfected Liens in the Collateral.

8. **COSTS AND EXPENSES.** Borrowers shall pay to Agent all of Lenders’ reasonable and documented out-of-pocket costs and expenses (including, without limitation, the reasonable and documented fees and expenses of its counsel, which counsel may include any local counsel deemed necessary, search fees, filing and recording fees, documentation fees, appraisal fees, travel expenses, and other fees) arising in connection with the preparation, execution, and delivery of this Amendment and all related documents as well as expenses related to the maintenance of the facility (such as periodic searches).

9. **LIMITED EFFECT.** In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Agreement, the terms and provisions of this Amendment shall govern. In all other respects, the Agreement, as amended and supplemented hereby, shall remain in full force and effect.

10. **COUNTERPARTS; EFFECTIVENESS.** This Amendment may be executed in any number of counterparts and by different parties on separate counterparts, each of which when so executed and delivered shall be deemed to be an original. All such counterparts, taken together, shall constitute but one and the same Amendment. This Amendment shall become effective upon the execution of a counterpart of this Amendment by each of the parties hereto and satisfaction of each of the other conditions precedent set forth in Section 6 hereof. This Amendment is a Loan Document and is subject to all the terms and conditions, and entitled to all the protections, applicable to Loan Documents generally. Delivery of an executed counterpart of this Amendment by telefacsimile or .pdf shall be equally effective as delivery of a manually executed counterpart.

11. **CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE.** Section 14 of the Agreement is incorporated herein by reference *mutatis mutandis*.

[Signatures on next page.]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

East West Bank
as Agent and a Lender

By: [***]

Title: [***]

Name: [***]

Amendment Number One
to Loan and Security Agreement

LENDER:

[***]

By: [***]

Title: [***]

Name: [***]

Amendment Number One
to Loan and Security Agreement

BORROWER:

AFC GAMMA, INC.
a Maryland corporation

By: /s/ Gabriel Katz
Title: Chief Legal Officer
Name: Gabriel Katz

Amendment Number One
to Loan and Security Agreement

Schedule E-1

[**]

Borrower	Total Commitment Amount	Outstanding Balance March 1, 2024
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]

Schedule E-1