

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

AFC Gamma, Inc.

(Exact name of registrant as specified in its charter)

Maryland

(State or other jurisdiction of
incorporation or organization)

85-1807125

(I.R.S. Employer
Identification No.)

**525 Okeechobee Blvd., Suite 1650
West Palm Beach, FL 33401
(561) 510-2390**

(Address, including zip code, of Principal Executive Offices)

**AFC Gamma, Inc.
Stock Incentive Plan
(Full title of the plan)**

**Leonard M. Tannenbaum
Chief Executive Officer
AFC Gamma, Inc.**

**525 Okeechobee Blvd., Suite 1650
West Palm Beach, FL 33401
(561) 510-2390**

(Name, address and telephone number, including area code, of agent for service)

COPY TO:

C. Brophy Christensen, Esq.
Jeeho M. Lee, Esq.
O'Melveny & Myers LLP
Times Square Tower
7 Times Square
New York, New York 10036
(212) 326-2000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer
Non-accelerated filer

Accelerated filer
Smaller reporting company
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 7(a)(2)(B) of the Securities Act.

EXPLANATORY NOTE

The AFC Gamma, Inc. Stock Incentive Plan, as amended (the “Plan”), includes an evergreen provision which provides that the total number of shares reserved for issuance under the Plan (the “Share Limit”) will automatically increase (i) upon the sale and consummation of any offering of the Company’s Common Stock after the date of the Company’s initial public offering (each such sale and offering, an “Equity Offering”), in an amount equal to ten percent (10.0%) of the total number of shares of Common Stock sold by the Company in connection with such Equity Offering and (ii) if on the last day of the Company’s fiscal year, the Share Limit has not increased during such fiscal year by an aggregate amount equal to or greater than two percent (2.0%) of the total number of shares of Common Stock outstanding on the first day of such fiscal year (the “Minimum Annual Increase”), then in an amount equal to the difference between the Minimum Annual Increase and the aggregate amount that the Share Limit increased during such fiscal year, effective as of the last day of such fiscal year. Notwithstanding the foregoing, the Company’s Board of Directors may act prior to the sale and consummation of the applicable Equity Offering or the last day of such fiscal year, as applicable, to provide that an increase in the Share Limit will be a lesser number of shares of Common Stock than would otherwise occur pursuant to the preceding sentence.

This Registration Statement is filed by the Company to register additional securities issuable pursuant to the Plan and consists of only those items required by General Instruction E to Form S-8.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The document(s) containing the information specified in Part I of Form S-8 will be sent or given to participants as specified by Rule 428(b)(1) promulgated under the Securities Act of 1933, as amended (the “Securities Act”).

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Certain Documents by Reference

The following documents of AFC Gamma (the “Company” or “Registrant”) the Company filed with the Securities and Exchange Commission (the “Commission”) are incorporated herein by reference:

- (a) The Company’s Registration Statement on Form S-8, filed with the Commission on [March 19, 2021](#) (Commission File No. 333-254480), as amended by Post-Effective Amendment No. 1 to the Form S-8, filed with the Commission on [January 10, 2022](#) (Commission File No. 333-254480), and the Company’s Registration Statement on Form S-8, filed with the Commission on [January 10, 2022](#) (Commission File No. 333-262091);
- (b) The Company’s Annual Report on Form 10-K for its fiscal year ended December 31, 2022, filed with the Commission on [March 7, 2023](#) (Commission File No. 001-39995);
- (c) The portions of the Company’s Definitive Proxy Statement on Schedule 14A, filed with the Commission on [April 4, 2022](#), that are incorporated by reference in Part III of the Company’s Annual Report on Form 10-K for its fiscal year ended [December 31, 2021](#) (Commission File No. 001-39995);
- (d) The Company’s Quarterly Reports on Form 10-Q for its fiscal quarters ended March 31, 2022, June 30, 2022 and September 30, 2022, filed with the Commission on [May 10, 2022](#), [August 9, 2022](#), and [November 8, 2022](#), respectively (each, Commission File No. 001-39995);
- (e) The Company’s Current Report on Form 8-K, filed with the Commission on [March 7, 2023](#) (Commission File No. 001-39995 and only as to the information “filed” with the Commission thereunder for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and not as to information “furnished” thereunder); and
- (f) The description of the Company’s Common Stock contained in its Registration Statement on Form 8-A filed on [February 3, 2021](#) (Commission File No. 001-39995), under the Exchange Act, and any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents; provided, however, that documents or information deemed to have been furnished and not filed in accordance with Commission rules shall not be deemed incorporated by reference into this Registration Statement. Any statement contained herein or in a document, all or a portion of which is incorporated or deemed to be incorporated by reference herein, shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or amended, to constitute a part of this Registration Statement.

Item 5. Interests of Named Experts and Counsel

Not applicable.

Item 8. Exhibits

See the attached Exhibit Index at page 3, which is incorporated herein by reference.

EXHIBIT INDEX

EXHIBIT INDEX

Exhibit Number	Description of Exhibit
4.1†	AFC Gamma, Inc. Stock Incentive Plan (Filed as Exhibit 10.5 to the Company's Registration Statement on Form S-11 (Commission File No. 333-251762), initially filed with the Commission on December 28, 2020, as amended on January 22, 2021, February 3, 2021, February 11, 2021, February 16, 2021, February 24, 2021, and March 16, 2021).
5.1	Opinion of Venable LLP (opinion re legality).
23.1	Consent of CohnReznick LLP (consent of independent registered public accounting firm).
23.2	Consent of Counsel (included in Exhibit 5.1).
24.1	Power of Attorney (included in this Registration Statement under "Power of Attorney").
107	Filing Fee Table

† Previously filed.

SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Form S-8 Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of West Palm Beach, State of Florida, on March 8, 2023.

AFC Gamma, Inc.

By: /s/ Leonard M. Tannenbaum
Leonard M. Tannenbaum
Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Leonard M. Tannenbaum and Brett Kaufman, and each of them, acting individually and without the other, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place, and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments, exhibits thereto and other documents in connection therewith) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or either of them individually, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Leonard M. Tannenbaum</u> Leonard M. Tannenbaum	Chief Executive Officer and Director (Principal Executive Officer)	March 8, 2023
<u>/s/ Brett Kaufman</u> Brett Kaufman	Chief Financial Officer and Treasurer (Principal Financial and Accounting Officer)	March 8, 2023
<u>/s/ Jonathan Kalikow</u> Jonathan Kalikow	Head of Real Estate and Director	March 8, 2023
<u>/s/ Robert Levy</u> Robert Levy	Director	March 8, 2023
<u>/s/ Jodi Hanson Bond</u> Jodi Hanson Bond	Director	March 8, 2023
<u>/s/ Thomas Harrison</u> Thomas Harrison	Director	March 8, 2023
<u>/s/ Alexander Frank</u> Alexander Frank	Director	March 8, 2023
<u>/s/ Marnie Sudnow</u> Marnie Sudnow	Director	March 8, 2023

March 8, 2023

AFC Gamma, Inc.
525 Okeechobee Blvd., Suite 1650
West Palm Beach, Florida 33401

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have served as Maryland counsel to AFC Gamma, Inc., a Maryland corporation (the "Company"), in connection with certain matters of Maryland law relating to the registration by the Company of an additional 91,323 shares (the "Shares") of the common stock, \$0.01 par value per share, of the Company (the "Common Stock") that the Company may issue pursuant to the Company's Stock Incentive Plan (the "Plan"), covered by the above-referenced Registration Statement, and all amendments thereto (the "Registration Statement"), filed by the Company with the United States Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "1933 Act"), on or about the date hereof.

In connection with our representation of the Company, and as a basis for the opinion hereinafter set forth, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following documents (hereinafter collectively referred to as the "Documents"):

1. The Registration Statement;
 2. The charter of the Company (the "Charter"), certified by the State Department of Assessments and Taxation of Maryland (the "SDAT");
 3. The Amended and Restated Bylaws of the Company, certified as of the date hereof by an officer of the Company;
 4. A certificate of the SDAT as to the good standing of the Company, dated as of a recent date;
 5. The Plan;
 6. Resolutions (the "Resolutions") adopted by the Board of Directors of the Company, relating to the issuance of the Shares and the approval of the Plan, certified as of the date hereof by an officer of the Company;
 7. Resolutions adopted by the stockholders of the Company relating to the approval of the Plan, certified as of the date hereof by an officer of the Company;
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8. A certificate executed by an officer of the Company, dated as of the date hereof; and

9. Such other documents and matters as we have deemed necessary or appropriate to express the opinion set forth below, subject to the assumptions, limitations and qualifications stated herein.

In expressing the opinion set forth below, we have assumed the following:

1. Each individual executing any of the Documents, whether on behalf of such individual or another person, is legally competent to do so.

2. Each individual executing any of the Documents on behalf of a party (other than the Company) is duly authorized to do so.

3. Each of the parties (other than the Company) executing any of the Documents has duly and validly executed and delivered each of the Documents to which such party is a signatory, and such party's obligations set forth therein are legal, valid and binding and are enforceable in accordance with all stated terms.

4. All Documents submitted to us as originals are authentic. The form and content of all Documents submitted to us as unexecuted drafts do not differ in any respect relevant to this opinion from the form and content of such Documents as executed and delivered. All Documents submitted to us as certified or photostatic copies conform to the original documents. All signatures on all Documents are genuine. All public records reviewed or relied upon by us or on our behalf are true and complete. All representations, warranties, statements and information contained in the Documents are true and complete. There has been no oral or written modification of or amendment to any of the Documents, and there has been no waiver of any provision of any of the Documents, by action or omission of the parties or otherwise.

5. None of the Shares will be issued in violation of any restriction or limitation contained in the Charter or the Plan. Upon any issuance of Shares, the total number of shares of Common Stock issued and outstanding will not exceed the total number of shares of Common Stock that the Company is then authorized to issue under the Charter.

6. Each option, award, right or other security exercisable or exchangeable for a Share pursuant to the Plan (each, an "Award") will be duly authorized and validly granted in accordance with the Plan, and each Award will be exercised or exchanged in accordance with the terms of the Plan and such Award, including any option or award agreement entered into in connection therewith.

AFC Gamma, Inc.
March 8, 2023
Page 3

Based upon the foregoing, and subject to the assumptions, limitations and qualifications stated herein, it is our opinion that:

1. The Company is a corporation duly incorporated and existing under and by virtue of the laws of the State of Maryland and is in good standing with the SDAT.
2. The issuance of the Shares has been duly authorized and, when issued and delivered by the Company pursuant to the Resolutions and the Plan, the Shares will be validly issued, fully paid and nonassessable.

The foregoing opinion is limited to the laws of the State of Maryland and we do not express any opinion herein concerning any other law. We express no opinion as to the applicability or effect of federal or state securities laws, including the securities laws of the State of Maryland, or as to federal or state laws regarding fraudulent transfers. To the extent that any matter as to which our opinion is expressed herein would be governed by the laws of any jurisdiction other than the State of Maryland, we do not express any opinion on such matter. The opinion expressed herein is subject to the effect of any judicial decision which may permit the introduction of parol evidence to modify the terms or the interpretation of agreements.

The opinion expressed herein is limited to the matters specifically set forth herein and no other opinion shall be inferred beyond the matters expressly stated. We assume no obligation to supplement this opinion if any applicable law changes after the date hereof or if we become aware of any fact that might change the opinion expressed herein after the date hereof.

This opinion is being furnished to you for submission to the Commission as an exhibit to the Registration Statement. We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of the name of our firm therein. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the 1933 Act.

Very truly yours,

/s/ Venable LLP

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in this registration statement on Form S-8 of AFC Gamma, Inc. of our report dated March 7, 2023, on our audits of the consolidated financial statements of AFC Gamma, Inc. and Subsidiary as of December 31, 2022 and 2021, and for the years then ended, which report is included in the Annual Report on Form 10-K of AFC Gamma, Inc. for the year ended December 31, 2022, which includes an explanatory paragraph relating to risks and uncertainties due to originating, structuring, underwriting and managing senior secured loans and other types of loans for established cannabis industry operators.

/s/ CohnReznick LLP

Baltimore, Maryland
March 8, 2023

CALCULATION OF FILING FEE TABLE

FORM S-8

AFC Gamma, Inc.

(Exact name of registrant as specified in its charter)

Table 1. Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered(1)	Proposed Maximum Offering Price Per Unit(2)	Maximum Aggregate Offering Price(2)	Fee Rate	Amount of Registration Fee
Equity	Common Stock, par value of \$0.01 per share, issuable pursuant to the Registrant's Stock Incentive Plan	Rule 457(c) and Rule 457(h)	91,323	\$15.49	\$1,414,593.27	0.00011020	\$155.89
Total Offering Amounts					\$1,414,593.27		\$155.89
Total Fee Offsets							\$0
Net Fee Due							\$155.89

(1) This Registration Statement covers, in addition to the number of shares of AFC Gamma, Inc., a Maryland corporation (the "Company" or the "Registrant"), common stock, par value \$0.01 per share (the "Common Stock"), stated above, options and other rights to purchase or acquire the shares of Common Stock covered by this Registration Statement and, pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), an additional indeterminate number of shares, options and rights that may be offered or issued pursuant to the AFC Gamma, Inc. Stock Incentive Plan (the "Plan") as a result of one or more adjustments under the Plan to prevent dilution resulting from one or more stock splits, stock dividends or similar transactions.

(2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) and Rule 457(c) promulgated under the Securities Act. The offering price per share and the aggregate offering price are based upon the average of the high and low prices of the Registrant's common stock as reported on the Nasdaq Stock Market on March 6, 2023, in accordance with Rule 457(c) of the Securities Act.