

FILED

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**NATIONAL FUTURES ASSOCIATION
LEGAL DOCKETING**

NFA Case No. 17-BCC-014

On April 23 and 24, 2018, a designated Panel of the Hearing Committee (Panel) held a hearing to consider the charges against Quants Capital Management, Inc. (Quants) and Gokhan Kisacikoglu (Kisacikoglu). The Panel issues the following Decision under National Futures Association (NFA) Compliance Rule 3-10.

1

On October 4, 2017, NFA's Business Conduct Committee (BCC) issued a two-count Complaint against Quants and Kisacikoglu. The Complaint charged that Quants violated NFA Compliance Rule 2-13 by failing to prepare and distribute pool account statements. The Complaint also charged that Quants further violated NFA Compliance Rule 2-13 and together with Kisacikoglu violated NFA Compliance Rules 2-2(a), 2-29(a)(1), 2-29(b)(1), 2-29(b)(2), 2-29(c)(1), and 2-29(c)(5) by preparing and distributing a misleading disclosure document and misleading and deceptive

promotional material that included the performance of accounts over which Kisacikoglu did not have discretion, failed to clearly identify performance results as hypothetical and failed to disclose the material assumptions made in preparing the hypothetical results. On November 16, 2017, Quants and Kisacikoglu 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. Kisacikoglu testified on behalf of Quants and himself. Quants and Kisacikoglu also entered a number of documents into evidence. A summary of the relevant evidence follows:

Raymond Horn

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

Quants was a registered commodity pool operator (CPO) and an NFA Member from May 2010 to January 2018. Kisacikoglu was an associated person (AP) and listed principal of Quants from May 2010 to January 2018. Quants was withdrawn from NFA Membership in January 2018 due to non-payment of dues and fees.

While an NFA Member, Quants operated two pools that engaged in trading. The first pool, Quants Strategy Equity Fund, LP was active for a period of five months in 2011 during which the fund lost 91 percent of its sole participant's \$3 million investment. Quants listed the second pool, Quants Fund, LP (Quants Fund) in 2016.

Horn indicated that Kisacikoglu informed NFA that he established Quants, Inc. in January 2017 as the holding company of Quants to address capital requirements in California, where Quants is a registered investment adviser. Quants, Inc. is the 100 percent owner of Quants. Kisacikoglu is the founder, majority shareholder, CEO and CFO of Quants, Inc.

This is the second BCC Complaint against Quants and Kisacikoglu. In 2012, the BCC issued a Complaint against Quants and Kisacikoglu alleging that they failed to fully cooperate with NFA's document requests and failed to file an audited financial statement. (NFA Exhibit 6) Quants and Kisacikoglu settled the case by agreeing to pay a \$12,500 fine, produce to NFA requested documents and engage a third-party administrator to provide administrative and recordkeeping services to Quants and any pool it operates. (NFA Exhibit 7)

Horn was the manager assigned to the examination of Quants and Kisacikoglu. Horn and the examination team visited Quants' office on February 1, 2017. The examination team's review of Quants' cash records revealed that the firm had raised approximately \$1.7 million of capital in the form of debt and stock sales. The examination team's review of the cash records did not reveal any incoming revenue. In late March, Horn learned that the Quants Fund had obtained a pool participant who made a \$1 million investment in the Quants Fund in April 2017. The Quants Fund commenced trading through an account at Apex Clearing Corporation (Apex) on April 21, 2017 and continued trading through August 2017.

Quants did not provide monthly pool account statements for April, May and June 2017 to the pool participant within 30 days of the month end as required by

NFA Compliance Rule 2-13 and Commodity Futures Trading Commission (CFTC) Regulation 4.22¹. When NFA asked Quants to provide the April account statement when it was due at the end of May, Kisacikoglu represented to NFA that he and his administrator were still working on the accounting for the April statement.

Over the following weeks, Horn and the examination team requested the April account statement from Quants on an approximately weekly basis. On June 6, Kisacikoglu represented to Horn that he was wrapping up the expenses for the final statements and expected the statement to be issued later that day. (NFA Exhibit 9) However, NFA did not receive the April account statement later that day.

Horn sent Quants an email on June 13, 2017 regarding the status of the April account statement. (NFA Exhibit 9) Kisacikoglu responded that his administrator was on vacation and he was unable to finish compiling the organizational costs himself but intended to do so later in the week. NFA did not receive the April account statement later that week.

When Horn did not receive the April account statement by June 20, he sent Kisacikoglu an email on June 21 requesting to speak with the administrator to discuss the status of the accounting. (NFA Exhibit 9) Kisacikoglu responded that he could coordinate a call with the administrator for the next day. Kisacikoglu also indicated that the trading accounting was complete but the organizational costs needed to be separated for the fund versus the corporate expenses in order to prepare the April monthly statement.

¹ As discussed later, Quants subsequently filed a claim for a CFTC Regulation 4.7 exemption for the fund, which allows the CPO to provide quarterly rather than monthly statements.

Horn subsequently learned that the administrator would be out of the country until July. Horn sent an email to the administrator on June 29 requesting a status update on the April accounting and verifying Kisacikoglu's representations that the organizational costs were holding up production of the April 2017 account statement. (NFA Exhibit 9) The administrator replied that she had received the organizational cost documents from Kisacikoglu the previous day and expected to complete the net asset value (NAV) by early July. Horn noted that the administrator indicated in the email that she could not issue the April account statement until she received and reviewed a revised disclosure document from Kisacikoglu. Horn acknowledged that the administrator's email supported Kisacikoglu's representations to NFA that the administrator would not issue the monthly account statements until Kisacikoglu updated the disclosure document to provide for certain expenses that could be charged to the pool.

According to Horn, the disclosure document was clear as to the different types of expenses that could be charged to the pool. Horn testified that the expense information requested by the administrator was not relevant to the preparation of the monthly account statements. Horn believed that this would be basic knowledge for a fund administrator.

NFA never received the April 2017 account statement from Quants or its administrator. In Kisacikoglu's response to NFA's June examination report (NFA Exhibit 24) that he submitted in September 2017, Kisacikoglu notified NFA that the administrator had terminated her contract with Quants. Kisacikoglu's examination response stated that the administrator refused to issue the NAV reports without the

updated disclosure document and decided to resign due to her potential liability to the investors.

During its examination of Quants, NFA also found that Quants prepared and distributed a misleading disclosure document. NFA found that the Quants Fund's September 2016 disclosure document included pool performance for customer accounts for which neither Quants nor Kisacikoglu had a direct relationship or trading power of attorney. (Exhibit 16) Kisacikoglu represented to NFA that the profitable performance in the disclosure document was derived from trading recommendations that Quants provided to seven account holders at MedSecurities Investment sal (together with its affiliates, MedSecurities)² for 19 months between 2012 and 2013.

According to Horn, Respondents did not provide adequate documentation to demonstrate that they had discretion over the MedSecurities accounts. Adequate documentation would have included customer statements, power of attorneys and evidence of compensation for trading the MedSecurities accounts. Horn testified that NFA requested that Respondents provide these documents to support the claim that they had discretionary authority to trade the accounts, but Kisacikoglu claimed he was unable to do so. Horn stated that Kisacikoglu informed NFA that compensation for Kisacikoglu's trading of accounts at MedSecurities was paid to a business partner to offset receipts Kisacikoglu had with them. Kisacikoglu informed NFA that the September 2016 disclosure document, including the MedSecurities account performance, was provided to the Quants Fund's sole investor.

² Evidence introduced during the Hearing indicates that MedSecurities Investments sal and BankMed sal are two separate entities (Quants Exhibit 3); however, "MedSecurities" and "BankMed" were used interchangeably during the Hearing. See, e.g., Hearing Transcript, pp. 198-200. Accordingly, MedSecurities has been defined to include MedSecurities Investments sal and its affiliates, including but not limited to BankMed sal.

At one point during the examination, Kisacikoglu represented to NFA that neither Quants nor its principals had direct relationships nor power of attorney over any customer accounts included in the past performance in the disclosure document and did not know the names of the account owners. (NFA Exhibit 18) Horn sent Kisacikoglu an email on June 27, 2017 to verify NFA's understanding of Kisacikoglu's representations regarding the performance information in the disclosure document, including Kisacikoglu's representation that Quants did not have power of attorney over any accounts and was not given access to customer account names. (NFA Exhibit 18) Kisacikoglu responded that Horn's email was accurate and that he did not know the identities of the customers. (NFA Exhibit 18)

Horn was also unable to verify whether the purported profitable performance shown in the disclosure document was accurate. As a CPO, Quants is required to provide adequate support to substantiate performance disclosed in its disclosure document. However, the spreadsheet that Kisacikoglu provided to NFA as a basis for the performance of the MedSecurities accounts was inadequate. Horn was unable to verify the authenticity of the returns in the spreadsheet, because Quants did not provide any other means to support the performance, such as customer statements. The only performance included in the disclosure document that Horn was able to verify was a loss of 59.49 percent in August 2013 attributable to trading in accounts at Interactive Brokers.

NFA also reviewed promotional material used by Quants, including the December 2016 tear sheet and the Quants website. According to Horn, the tear sheet showed a 50.63 percent positive return in 2014, a 19.09 percent positive return in 2015

and a 24.22 percent positive return in 2016. Although Kisacikoglu informed NFA that these results were hypothetical, Horn indicated that the tear sheet did not clearly identify these results as hypothetical. Horn noted that the hypothetical results are placed near the section labeled "Fund Facts," giving the appearance that the results are a report of the Quants Fund's actual performance. Horn acknowledged that the tear sheet included a hypothetical performance disclaimer at the bottom of the tear sheet, but noted that the disclosure was not adequate to identify the performance as hypothetical. The tear sheet also failed to include the required description of material assumptions relied on in calculating the hypothetical returns.

The tear sheet also claimed, "Quants has built alternative investment platforms, indexes and funds since 2010 delivering outstanding performance generating within the top 1% of returns for institutional and high net worth clients." According to Horn, this statement is misleading because NFA could not verify the accuracy of the purported highly profitable returns in the MedSecurities accounts, the performance of which formed the basis for the tear sheet's top 1 percent claim. NFA also could not verify that Kisacikoglu had discretion over the MedSecurities accounts. The only performance by Quants and Kisacikoglu that NFA could verify showed losses of 91 percent in 2011 in the Quants Strategic Equity Fund and a 59 percent loss in the Interactive Brokers accounts in August 2013. Horn acknowledged that the investor who received the tear sheet was a qualified eligible person (QEP).

NFA also reviewed the Quants website as part of its examination. (NFA Exhibit 20) The website, which was available to the public, made two claims based on the performance information in the September 2016 disclosure document. First, the

website stated, "Quants generated 74% annual returns in its managed accounts in 2012-2013 with its risk management models." Second, the website stated, "The firm has established a track record in derivatives trading, but especially focused on the index investments with the volatility hedging since 2012. These yielded in excess of 74% annualized returns over a two-year period after all fees and expenses." Horn testified that the performance claims on the website were based on the performance information contained in the disclosure document, which NFA was unable to verify, therefore NFA was unable to verify the validity of the claims.

NFA issued an examination report to Quants on June 30, 2017 indicating that Respondents failed to prepare account statements in a timely manner, included performance in their disclosure document based on trading for which neither Kisacikoglu nor Quants had powers of attorney, and used promotional materials that included statements of fact that could not be supported (NFA Exhibit 15). Although Kisacikoglu responded the same day, indicating that he would address the issue of the missing customer statements immediately and would seek legal advice to address the marketing issues in July (NFA Exhibit 21), NFA did not receive Quants' final response to the examination report until September 13, 2017. (NFA Exhibit 24)

At this time, Kisacikoglu also submitted to NFA interim reports for the April 2017 monthly account statement (NFA Exhibit 10) and the April – June 2017 quarterly statement (NFA Exhibit 11) that Kisacikoglu had provided as account updates to Quants Fund's sole investor. While the April interim report did provide some information to the fund's investor regarding the April account activity, it did not comply with the requirements of CFTC Regulation 4.22. Horn acknowledged that Quants filed for a

CFTC Regulation 4.7 exemption in August, which would allow Quants to prepare and distribute account statements to pool participants on a quarterly rather than monthly basis. According to Horn, however, a 4.7 exemption cannot be applied retroactively and Quants was obligated to provide monthly account statements to pool participants for the months of April, May and June.

Horn also reported that the quarterly account statement was concerning because it showed a profit when an analysis of the quarterly statement indicated a strong possibility of losses. In particular, the April – June quarterly statement listed as an asset about \$500,000 in stock of the holding company Quants, Inc. (NFA Exhibit 11) However, a review of the quarterly account statement indicated that without the Quants, Inc. stock, the pool had lost approximately half of its assets in trading. When Horn called Kisacikoglu to inquire about the quarterly statement, Kisacikoglu stated that he had transferred the stock from Quants, Inc. to the fund in June 2017.

According to Horn, Kisacikoglu was unable to provide a satisfactory basis for the valuation of the Quants, Inc. stock. Horn stated that at the beginning of the valuation, there was a disclaimer indicating that the stock's value was based on assumptions and future plans of Quants, Inc. and there was no guarantee that Quants, Inc. could meet the aggressive revenue assumptions going forward. Although NFA received the April monthly update and the quarterly account statement on September 13, NFA did not review them until after the September 18, 2017 BCC meeting and was not aware of the information in the statements at the September 18, 2017 BCC meeting.

Following receipt of the quarterly statement, Horn requested and received from Apex trading account statements for the months of July and August on September

20, two days after the BCC authorized the issuance of a Complaint against Quants and Kisacikoglu. The account statements revealed that of the nearly \$1 million that was invested in the Quants Fund in April, approximately half had been lost by the end of June and most of the other half had been lost by the end of July (NFA Exhibit 12). The Apex account showed a \$541,000 debit balance at the end of August. (NFA Exhibit 13) According to Horn, Kisacikoglu did not inform NFA of the losses or the fact that the fund had ceased trading in Quants' September 13 examination response.

In November, NFA received Quants' pool quarterly report (PQR) for the third quarter. (NFA Exhibit 14) Quants did not report any of the material losses that the Quants Fund incurred in June, July and August 2017. According to Horn, Quants is required to include this information in the trading performance disclosure section of the PQR. Despite the large losses the fund incurred in June, July and August, the third quarter PQR reported a 1.03 percent gain in June, only a .50 percent loss in July and only a 3.14 percent loss in August. Although the Quants Fund carried a debit balance at Apex and did not trade in September, the third quarter PQR showed a gain of 1.87 percent for that month. Horn noted that the PQR did not reflect the \$541,000 debit owed to Apex.

Horn noted that Kisacikoglu had valued the Quants, Inc. stock transferred to the Quants Fund in June at \$1 million, which was approximately the same amount that the Quants Fund had started with in April and lost over the course of the next four months. NFA did not regard \$1 million as a reasonable valuation of the stock. Horn noted that NFA considered Quants' valuation schedule, the consolidated financial

statements, the cash analysis NFA had completed earlier and the firm's limited revenue and concluded that there was little support for Quants' valuation of its stock.

Horn acknowledged that NFA did not cite the PQR as a rule violation in the Complaint. He noted that the Complaint was issued in September 2017 and NFA did not receive the PQR until November 2017.

Gokhan Kisacikoglu

Kisacikoglu testified substantially as follows:

Kisacikoglu was born in Istanbul, Turkey and has lived in the United States for 23 years. After arriving in the United States, Kisacikoglu began developing software trading programs. In 2010, Kisacikoglu registered Quants with the CFTC and became an NFA Member.

Quants is also a registered investment adviser in California. Kisacikoglu reported that the California securities regulator recommended that Kisacikoglu restructure Quants LLC in connection with a 2016 audit. As part of this restructuring, Kisacikoglu formed Quants, Inc. as a holding company for his different entities, which included Quants, Quants Investment Technologies and Quants Plus. Quants Investment Technologies holds the group's software assets and Quants Plus is a software development company.

According to Kisacikoglu, the April monthly account statement was late because his administrator told him that the disclosure document needed to be updated with adequate disclosures of the offering expenses before she could prepare the monthly statements. Kisacikoglu also stated that the administrator would not prepare the monthly statements until the organizational costs were separated from the software

costs. Kisacikoglu testified that he was unable to update the disclosure document due to the ongoing examination, resulting in a longer delay in preparing the monthly account statements. Kisacikoglu provided an interim report to Quants Fund's sole investor for the month of April 2017.

On cross-examination, Kisacikoglu admitted that it was possible that splitting the organizational and software costs did not require any changes to the disclosure document and that the administrator could have issued the April monthly account statement without any changes to the disclosure document. Kisacikoglu also acknowledged that the administrator was not as concerned by the disclosure document as she was with the way that Kisacikoglu compiled the invoices for the organizational costs.

According to Kisacikoglu, the administrator resigned from providing services to Quants because she wanted to have specific language describing how expenses were separated in the disclosure document and because she was concerned by the lengthy delay in issuing the monthly account statement and the fund's losses. On cross-examination, Kisacikoglu acknowledged that the administrator had all of the accounting information needed to prepare the statements and that she could have done a better job. Kisacikoglu stated that there were issues with statements being issued late, but he did the best he could under the circumstances.

Kisacikoglu reported that, in 2011, his first pool, Quants Strategic Equity Fund, tried a trading strategy that performed poorly and lost 91 percent of its assets. According to Kisacikoglu, MedSecurities was the sole investor in the Quants Strategy Equity Fund.

Instead of launching another fund, Kisacikoglu reported that he managed accounts for customers of MedSecurities in 2012 and 2013. In March 2012, Kisacikoglu began to test a new trading program he had developed by directing trades in the MedSecurities account of Ahmet Eti (Eti). Eti executed a power of attorney for Kisacikoglu to test his new trading program. (Quants Exhibit 4) This power of attorney was not provided to NFA during the course of the examination and was produced for the first time in connection with the hearing. Kisacikoglu asserted that this power of attorney covered a joint account owned by Eti and Hanna Boulos (Eti account). Kisacikoglu testified that soon after he began trading the Eti account, Eti referred Kisacikoglu to other customers and he began managing a total of seven customer accounts at MedSecurities that traded futures and options between April 2012 and October 2013. Kisacikoglu reported that these seven accounts were essentially covered under the initial agreement with Eti, because they were sub-accounts of Eti's lead account. According to Kisacikoglu, MedSecurities acted both as an administrator and as trade executor for Quants.

Kisacikoglu testified that he had power of attorney and full discretion over seven accounts at MedSecurities. Kisacikoglu stated that in 2013 MedSecurities sent him power of attorney forms for these accounts, which he signed and returned to MedSecurities. According to Kisacikoglu, MedSecurities acted as an administrator, collected signatures on the power of attorney forms from seven investors that were located in different parts of the world and maintained these forms for Quants. (Quants Exhibit 5) Kisacikoglu stated that he did not keep copies of the documents he signed, because he assumed he would be sent a final copy once they had been signed by the

investors. Kisacikoglu acknowledged that he never received written confirmation that the customers had executed the powers of attorney, but the customers had informed him that they signed and returned the power of attorney to MedSecurities. Kisacikoglu also testified that he knew the identities of the seven account holders.

Despite NFA's repeated requests, Kisacikoglu reported that he is unable to provide the signed power of attorney forms to NFA because MedSecurities will not release them without permission from the seven former account owners. (Quants Exhibit 6) Kisacikoglu wrote several letters to MedSecurities asking for the release of the power of attorney forms and account statements. According to Kisacikoglu, MedSecurities' response to his requests denying him access to the power of attorney forms without permission from the accountholders is evidence that the signed power of attorney forms exist and that he had full discretion over the accounts.

Kisacikoglu reported that he filed a complaint with the Capital Markets Authority of Lebanon (CMA) to compel MedSecurities to provide both monthly statements and the power of attorney forms. Kisacikoglu believes that the CMA will eventually require MedSecurities to provide the power of attorney forms. He happened to have the power of attorney for the initial Eti account, which is why he is able to provide that particular power of attorney and not the others.

Kisacikoglu stated that although he cannot provide signed power of attorney forms or account statements for the MedSecurities accounts, he and Quants have other evidence to support the claim that they had full discretion over these accounts. For example, as part of NFA's 2012 examination of Quants, MedSecurities

wrote a letter to NFA confirming that Kisacikoglu was providing trading recommendations to one of its customers. (Quants Exhibit 3)

Quants Exhibits 7A and 7B are a collection of email correspondence between Kisacikoglu and MedSecurities containing Kisacikoglu's trade analysis and recommendations for trades executed in the seven accounts in 2012 and 2013. Kisacikoglu believes these documents indicate that he had discretion over the MedSecurities accounts. According to Kisacikoglu, he would send these reports to MedSecurities in advance for risk assessment purposes and then he would call a trading desk at MedSecurities with his trading instructions. MedSecurities would place the order and then send Kisacikoglu an email confirming the order had been placed.

On cross-examination, Kisacikoglu acknowledged that he made no reference to calling in orders at MedSecurities in his answer to the 2012 BCC Complaint in response to allegations related to Kisacikoglu's procedure for making trading recommendations. According to Kisacikoglu, first he sent the trade recommendations by email and then he called them in because the prices would change between sending the email and when the trades were ready to execute. The trades in the emails could be slightly different than the orders made over the phone.

Kisacikoglu reported that MedSecurities maintained order tickets for the orders he placed on behalf of the MedSecurities accounts. Kisacikoglu agreed that having the order tickets would have shown that he had discretion over the accounts. However, since he knew what was happening in the accounts based on the trading confirmations, he did not request the order tickets.

Kisacikoglu testified that Quants Exhibits 8A through 8H are spreadsheets provided to Kisacikoglu by MedSecurities that detail the trading in the seven accounts managed by Quants in 2012 and 2013. Kisacikoglu believes that these documents demonstrate that he exercised control over the trading in the MedSecurities accounts. According to Kisacikoglu, the fact that these spreadsheets were prepared and provided by MedSecurities substantiates his claim that he placed the trades in the MedSecurities accounts.

Kisacikoglu reported that he received account statements for the largest MedSecurities account, but not the others. He assumed that all the accounts were executed in accordance with his instructions. According to Kisacikoglu, NFA could verify his trade orders by reviewing the trade confirmations and spreadsheets from MedSecurities that Kisacikoglu had provided to NFA or by requesting voice records from MedSecurities. Kisacikoglu acknowledged that he never asked Eti if he had copies of the account statements for the MedSecurities accounts.

Kisacikoglu relied on these spreadsheets in calculating the past performance in the April 2016 disclosure document. Kisacikoglu attempted to obtain the actual account statements from MedSecurities, but MedSecurities would not provide them because Kisacikoglu was no longer doing business with them. As a result, Kisacikoglu requested in his complaint to the CMA that the CMA also compel MedSecurities to provide the account statements.

Kisacikoglu testified that he received \$4 million for trading the seven accounts. He testified that he does not have evidence of this compensation because he directed those payments to the company's debtholders.

Kisacikoglu acknowledged that he confirmed Horn's statement in the June 27, 2017 email that Kisacikoglu did not have power of attorney forms over any of the MedSecurities accounts. (NFA Exhibit 18) He stated his confirmation of that statement was based on his mistaken belief that Horn was asking whether he placed the MedSecurities account assets in a pool and was acting as a CPO. Kisacikoglu also acknowledged that in NFA Exhibit 18 he stated in an email to NFA that he did not know the identities of the investors. However, he was referring to licensee accounts, which were different from the seven accounts he managed.

Regarding the promotional material, the 74 percent annualized return displayed on the Quants website represented the rate of return on the trading in the MedSecurities accounts in 2012 and 2013 as disclosed in the April 2016 disclosure document. Kisacikoglu stated that the 74 percent annualized return was an accurate statement with regard to the performance of the MedSecurities accounts.

Kisacikoglu acknowledged that the rate of return was based on the cash in the account, not the notional trade level. Kisacikoglu based his performance calculations on five times the leverage. Kisacikoglu testified that the website's statement that, "The firm has established a track record in derivatives trading, but especially focused on the index investments with the volatility hedging since 2012. These yielded in excess of 74% annualized returns over a two-year period after all fees and expenses" is accurate. He clarified that the two-year period is actually a 19-month period between April 2012 and October 2013. Kisacikoglu stated that the tear sheet's statement that "The Company increased the institutional assets under management (AUM) from \$1.4 million to \$16.7 million over 19 months generating up to 76% annual return in derivatives portfolios after

all fees and expenses" is also an accurate representation of his trading in the MedSecurities accounts.

Kisacikoglu stated that the tear sheet was provided to the single investor in the Quants Fund around March 2017. The statement in the tear sheet that "Quants has built alternative investment platforms, indexes and funds since 2010 delivering outstanding performance generating within the top 1% of returns for institutional and high net worth clients" is based on the Barclays Hedge Fund Index. Kisacikoglu hired a marketing person to prepare the website, and the marketing person included the statement based on research he conducted. According to Kisacikoglu, the one percent statement included the performance of the Quants Strategic Equity Fund. He calculated the rates of return daily using cash as the denominator.

Kisacikoglu acknowledged that, with the exception of the S&P 500 return, all of the performance on the December 2016 tear sheet is hypothetical. He included the hypothetical disclaimer in the disclosure section of the tear sheet, adjacent to the monthly and annual net returns table. The hypothetical disclaimer stated, "Past performance, particularly hypothetical simulated past performance, is not necessarily indicative of future results." The disclosure section also contained a statement that "Investment in the forgoing trading program is made available exclusively to 'qualified eligible persons' under CFTC regulation 4.7."

On December 20, 2017, Kisacikoglu received a letter from NFA requesting the power of attorney forms and account statements for the MedSecurities accounts. On December 21, 2017, Kisacikoglu sent NFA an email indicating that he would respond in detail on December 22, 2017 to all of NFA's document requests. Kisacikoglu

acknowledged that he has not provided these requested documents to NFA. According to Kisacikoglu, he is unable to provide these documents because MedSecurities denied his request to release them. Kisacikoglu reported that he contacted the owners of the MedSecurities accounts to request copies of the power of attorney forms. Kisacikoglu acknowledged that they did not cooperate with his request despite the fact that he had made a significant amount of money for them.

Quants, Inc. owns the software for Kisacikoglu's synthetic index program, which Kisacikoglu values at \$3.7 million. Kisacikoglu engaged a third party to value the software, but the valuation is still ongoing. According to Kisacikoglu, the valuation is based on the price that Quants, Inc. paid to buy it from one of his other companies. Kisacikoglu has not licensed the software to anyone. According to Kisacikoglu, there are buyers interested in purchasing the software, but he is waiting to sell when the software is at a higher valuation than it is at present.

Kisacikoglu acknowledged that the Quants Fund had large losses in June and July 2017, and in August 2017 had a debit balance at Apex. According to Kisacikoglu, the 1.03 percent positive return for June and the 1.87 percent positive return for September on the third quarter PQR (NFA Exhibit 14) that Quants filed with NFA was calculated based on injecting corporate stock into the fund in accordance with a guarantee letter with the investor in the Quants Fund. Kisacikoglu testified that the guarantee letter provides that investors will receive up to four percent of the company's stock for fund losses. Kisacikoglu acknowledged that the PQR did not disclose the large losses or that the fund's returns were based on transferring corporate stock to the fund.

III

FINDINGS AND CONCLUSIONS

Quants was a CPO Member of NFA during the period covered by the Complaint. As an NFA Member, Quants 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.³ Kisacikoglu was a principal and AP of Quants and an NFA Associate Member during the period covered by the Complaint. Therefore, Kisacikoglu was required to comply with NFA Requirements, and NFA has jurisdiction over him for purposes of this action.⁴

NFA's Complaint charges that Quants violated NFA Compliance Rule 2-13 by failing to prepare and distribute pool account statements. The Complaint also charges that Quants further violated NFA Compliance Rule 2-13 and together with Kisacikoglu violated NFA Compliance Rules 2-2(a), 2-29(a)(1), 2-29(b)(1), 2-29(b)(2), 2-29(c)(1), and 2-29(c)(5) by preparing and distributing a misleading disclosure document and using deceptive and misleading promotional material.

Failing to Prepare and Distribute Pool Statements

The Complaint alleged that Quants violated NFA Compliance Rule 2-13 because it failed to prepare and distribute monthly pool statements to pool participants. NFA Compliance Rule 2-13 requires a CPO to comply with a number of CFTC regulations, including the reporting requirements of CFTC Regulation 4.22. Among other things, CFTC Regulation 4.22 requires a CPO to prepare and distribute monthly

³ See NFA Compliance Rule 2-14.

⁴ See NFA Bylaw 301(b) and NFA Compliance Rule 2-14.

account statements to its pool participants.⁵ There is no dispute that Quants did not provide monthly account statements to the investor in the Quants Fund in a timely manner. Horn testified in detail regarding the repeated requests NFA made for the monthly account statements and NFA's attempt to obtain them directly from the firm's administrator. Kisacikoglu acknowledged that the monthly account statements were not provided to Quants' investor on time.

Although Kisacikoglu testified that Quants provided interim reports to its investor, including an interim report for April 2017 and a quarterly statement covering April to June 2017, Kisacikoglu did not dispute the fact that these statements did not meet the requirements of CFTC Regulation 4.22 and NFA Compliance Rule 2-13. While Kisacikoglu seems to believe that keeping Quants' investor "informed" of the status of the investor's account should relieve Quants from its regulatory responsibilities under CFTC Regulation 4.22 and NFA Compliance Rule 2-13, as a CFTC registrant and NFA Member Quants is required to fully comply with all of its regulatory obligations.

Throughout his testimony, Kisacikoglu attempted to place the blame for the late statements on Quants' administrator and NFA. He argued that Quants was unable to fulfill its regulatory responsibilities because the administrator would not issue the monthly statements without an updated disclosure document, and NFA would not accept an updated disclosure document from Quants given its ongoing examination. However, Horn provided credible testimony that the disclosure document did not need to be revised to issue the monthly account statements and that the administrator had all of the required information to issue the statements. The Panel also notes that during cross-examination, Kisacikoglu acknowledged that the administrator had all the

⁵ CFTC Regulation 4.22(a)..

accounting information necessary to prepare the account statements and that it was possible that the administrator could have issued the account statements without any changes to the disclosure document.

The Panel does not find Respondents' argument that Quants' administrator prevented the firm from preparing and distributing the monthly account statements compelling, particularly given Horn's credible testimony that the disclosure document did not need to be revised to issue the monthly account statements and Kisacikoglu's admissions during cross-examination. As a regulated entity, Quants is responsible for ensuring that it is in compliance with NFA Rules and CFTC Regulations at all times. Experiencing difficulties with an administrator is not an acceptable excuse for failing to satisfy the obligation to issue statements in a timely manner. Based on the undisputed fact that Quants did not provide the required account statements and Horn's credible testimony that the disclosure document did not prevent Quants from issuing the account statements, the Panel concludes that Quants violated NFA Compliance Rule 2-13 by failing to prepare and distribute monthly account statements required by CFTC Regulation 4.22(a).

Preparing and Distributing Deceptive and Misleading Promotional Material

NFA's Complaint also alleges that Quants further violated NFA Compliance Rule 2-13 and together with Kisacikoglu violated NFA Compliance Rules 2-2(a), 2-29(a)(1), 2-29(b)(1), 2-29(b)(2), 2-29(c)(1), and 2-29(c)(5) by preparing and distributing a disclosure document and promotional material that were deceptive and misleading. Specifically, the Complaint alleges that in their disclosure document and promotional material, Respondents included positive performance information related to

the MedSecurities accounts, but had no documentation to support the claimed returns. The Complaint also alleges that Respondents were unable to substantiate that they exercised discretion over these accounts that purportedly experienced the positive returns that were referenced in their disclosure document, tear sheet and website and therefore the use of unsubstantiated performance presented in these materials was deceptive and misleading. Finally, the Complaint charges that Quants and Kisacikoglu used a tear sheet that failed to clearly identify performance results as hypothetical and included a disclaimer that made it unclear whether the returns were actual or hypothetical.

Failing to Substantiate Performance Claims

There is no dispute that Kisacikoglu caused Quants to use the performance of the MedSecurities accounts as the basis for Quants' performance claims on the disclosure document, tear sheet and website. Pursuant to NFA Compliance Rule 2-13 (incorporating CFTC Regulation 4.25), Quants was required to maintain all documentation necessary to substantiate the computation of performance amounts set forth in its disclosure document. As preliminary matters, the Panel must determine whether Respondents maintained adequate documentation to substantiate the claim that they had discretion over the MedSecurities accounts and the highly profitable performance they reported for those accounts.

At the hearing, NFA presented testimony that Respondents did not provide documentation to verify that Respondents exercised trading control over the MedSecurities accounts or documentation to substantiate the trading activity that formed the basis of the performance information reflected in Quants' disclosure

document and promotional material. In particular, Horn testified that NFA requested signed power of attorney forms covering the customer accounts that were used to establish the claimed performance, customer account statements and evidence of compensation. Horn testified that neither Quants nor Kisacikoglu provided any of the specific documentation requested by NFA. Kisacikoglu acknowledged that neither he nor Quants provided the documentation requested by NFA. Kisacikoglu, however, presented other evidence that he claimed demonstrated that Respondents controlled the trading of the MedSecurities accounts, achieved the performance they claimed and were compensated for their efforts.

Maintaining documentation to substantiate performance set forth in a disclosure document is a regulatory requirement, standard business practice and, in the Panel's view, a relatively low hurdle to clear. For managed accounts, adequate documentation would typically include documentation evidencing trading authority (e.g., a power of attorney), trading activity (e.g., customer account statements) and evidence of compensation. It is an undisputed fact that Respondents failed to produce any of the documentation requested by NFA to support the claim that Respondents controlled the MedSecurities accounts, achieved the performance reflected in the disclosure document and promotional materials and were compensated for providing trading advice with respect to this activity.

The Panel finds that the evidence presented by Respondents is not sufficient to substantiate the claim that they exercised control over the MedSecurities accounts. Kisacikoglu's testimony that the limited power of attorney executed by Eti covered a lead account that was jointly owned by Eti and Hanna Boulos and that the

other MedSecurities accounts were sub-accounts is not consistent with the documentation entered in evidence. Specifically, the name and account number listed on this power of attorney do not correspond to the names or account numbers listed in the spreadsheets that purportedly reflect trading in the MedSecurities accounts. The Panel finds that this testimony is not credible.

Certain email correspondence produced by Respondents reference power of attorney forms, but a reference to a power of attorney form in an email does not establish that it exists or convey trading authority over a particular account. The Panel further notes that Respondents' claim that they had discretion over the MedSecurities accounts is further undermined by Kisacikoglu's June 27 email to NFA in which he represented to NFA that he did not have power of attorney forms over the MedSecurities accounts. Kisacikoglu's explanation that he misunderstood Horn's question strains credulity.

The Panel also finds that the evidence presented by Respondents is not sufficient to substantiate the claim that they achieved the performance they claimed with respect to the MedSecurities accounts. Respondents presented spreadsheets that were reportedly used as the basis for the performance in the disclosure document as well as email correspondence with MedSecurities related to the spreadsheets. It is the Panel's view that without additional support to verify the authenticity of the trading results on the spreadsheets, Respondents cannot show that the MedSecurities performance is accurate. Respondents have not provided customer account statements or other documentation to confirm that the trading depicted in the spreadsheets actually occurred and is complete and accurate. Instead, Respondents

provided only Kisacikoglu's self-serving testimony that the trading results reflected in the spreadsheets are accurate and were achieved by Respondents. Accordingly, the Panel finds that this testimony is neither credible nor sufficient to authenticate the spreadsheets.

To support the claim that Respondents were compensated for their role in advising the MedSecurities accounts, Respondents provided only Kisacikoglu's testimony that he directed the compensation to his business partners. This testimony was not confirmed by any documentation or other evidence.

In summary, the Panel finds that while the evidence presented by Respondents shows that they may have had some involvement with the MedSecurities accounts, the evidence falls short of demonstrating that Respondents actually controlled the trading in the MedSecurities accounts, achieved the results reported in the disclosure document and promotional material or were compensated for advising the MedSecurities accounts. The Panel also finds that Quants failed to maintain documentation required under CFTC Regulation 4.25 to substantiate the performance claims in violation of NFA Compliance Rule 2-13.

Deceptive and Misleading Disclosure Document, Tear Sheet and Website

NFA's Complaint alleges that Respondents violated NFA Compliance Rules 2-2(a), 2-29(a)(1), 2-29(b)(1) and 2-29(b)(2) by using a deceptive and misleading disclosure document, tear sheet and website. NFA Compliance Rule 2-2(a) prohibits Members and Associates from, among other things, deceiving or attempting to deceive any commodity futures customer. Compliance Rule 2-29(a)(1) prohibits Members and Associates from making any communication with the public that operates as a fraud or

deceit. Compliance Rule 2-29(b)(1) and 2-29(b)(2) prohibit Members and Associates from using any promotional material that is likely to deceive the public or contains a material misstatement of fact or omits a fact that makes the promotional material misleading.

As described above, the Panel found that Respondents did not substantiate the claim that they controlled the trading in the MedSecurities accounts or achieved the results reported in the disclosure document, tear sheet and website. The performance information included in these different pieces of promotional material depicted dramatic positive performance that could certainly help sway a potential client into concluding that Respondents had a successful track record. Clearly, one of the purposes of requiring a CPO to maintain documentation that evidences that it had discretion over accounts forming the basis of claimed performance information and to support that performance was actually achieved is to ensure that the information is accurate and that it does not mislead potential investors regarding the trading results of the CPO. Absent this requirement, a CPO could include any performance information in a disclosure document or promotional material, regardless of whether the CPO actually achieved the performance, and avoid a finding that it violated NFA Rules by claiming that it did not have any records to substantiate the performance. This is clearly an untenable result.

The Panel also notes that the only rates of return that have been substantiated are a 59 percent loss in the Interactive Brokers' accounts in August 2013 and a 91 percent loss in the Quants Strategy Equity Fund in 2011. Given the significant difference in the Respondents' substantiated negative performance and the

unsubstantiated positive performance they claimed to achieve, the Panel concludes that Respondents' use of the unsubstantiated positive performance of the MedSecurities accounts was intended to deceive and mislead investors. This conclusion is supported by the fact that Respondents failed to produce a single account statement, power of attorney or document evidencing that they were compensated for advising the MedSecurities accounts. Accordingly, the Panel finds that the use of the performance of the MedSecurities accounts in Quants' disclosure document, tear sheet and website was deceptive and misleading in violation of NFA Compliance Rules 2-2(a), 2-29(a)(1), 2-29(b)(1) and 2-29(b)(2).

Hypothetical Performance Used in the Tear Sheet

NFA also presented evidence that the tear sheet used by Respondents included profitable hypothetical performance in a misleading manner. In particular, the tear sheet includes a performance table that shows highly profitable hypothetical monthly and annual net returns over a three-year period that are not labeled as hypothetical. The performance table is adjacent to another table describing "Fund Facts," giving the performance table the appearance of being an actual Quants Fund performance report, when in fact the performance is hypothetical. While the disclaimer at the bottom of the tear sheet references hypothetical performance, it also references actual past performance results, making it unclear to the reader whether any of the performance on the tear sheet is actual or hypothetical. The tear sheet indicates that investment in the trading program is limited to QEPs and, according to Kisacikoglu, it was only provided to one investor, which qualified as a QEP.

The Panel acknowledges Respondents' argument that NFA Compliance Rule 2-29(c)(6) could be interpreted to exempt promotional material directed exclusively to QEPs from the technical requirements of NFA Compliance Rules 2-29(c)(1) and 2-29(c)(5). Instead of evaluating the tear sheet under the specific requirement of Compliance Rules 2-29(c)(1) and 2-29(c)(5), the Panel will focus on determining whether the tear sheet is deceptive and misleading in violation of NFA Compliance Rules 2-29(b)(1) and 2-29(b)(2), which apply to all promotional materials used by NFA Members.⁶

The ultimate test of any promotional material is whether the overall impact of the material is likely to be misleading or deceptive.⁷ It is the Panel's view that the performance chart on the tear sheet gives hypothetical performance the appearance of being actual performance and is therefore deceptive and misleading. This is especially true because the hypothetical performance is far better than any of Quant's actual performance that it can substantiate. Accordingly, the Panel finds that Respondents violated NFA Compliance Rules 2-29(b)(1) and 2-29(b)(2) by causing hypothetical performance to be presented in a manner that caused it to appear as if it were actual performance.

IV

PENALTY

In accordance with sanctioning guidance issued by the CFTC, the Panel considers several factors, including the nature and severity of the violations and the

⁶ See NFA Interpretive Notice 9025 – NFA Compliance Rule 2-29: Use of Promotional Material Containing Hypothetical Performance Results.

⁷ Id.

disciplinary history of the Respondents, in determining the appropriate sanction for each Respondent.⁸ The Respondents have engaged in a pattern of deceptive and misleading conduct and communications. Respondents used a disclosure document, tear sheet and website that claimed dramatic profits, when in fact, the only performance that NFA could substantiate revealed significant losses. The Respondents' tear sheet also presented hypothetical performance in a misleading manner. Finally, Quants failed to prepare and distribute monthly account statements despite repeated assurances that the account statements would be provided. These are serious violations that warrant serious sanctions.

NFA Hearing Panels routinely consider a respondent's past disciplinary history in assessing penalties.⁹ The Panel notes that this is the second BCC Complaint against Respondents for failing to comply with recordkeeping requirements and the second Complaint against Quants for failing to issue a statement including the items required by CFTC Regulation 4.22 in violation of NFA Compliance Rule 2-13. In accepting an Offer of Settlement in the prior matter, the hearing panel noted that Respondents' offer and the decision accepting it may be considered as aggravation evidence in subsequent matters. Despite this warning, Respondents have committed further violations of substantially similar NFA Rules. Accordingly, this factor supports assessing a significant penalty.

⁸ See, CFTC Policy Statement Relating to the Commission's Authority to Impose Civil Monetary Penalties and Futures Self-Regulatory Organizations' Authority to Impose Sanctions; Penalty Guidelines, Comm. Fut. L. Rep. [Current Transfer Binder] ¶ 26,265 (November 1994).

⁹ See, e.g., In the Matter of Universal Commodity Corporation, et al., 95-BCC-020 (Feb. 13, 1998) and In the Matter of Commonwealth Financial Group, Inc. et al., 94-BCC-13 (Aug. 26, 1996).

Based on the above findings and discussion, the Panel hereby imposes the following sanctions:

1. Quants is suspended from NFA membership for a period of one year from the date of this Decision. If after the conclusion of this one-year period Quants applies for NFA membership, Quants must pay a fine of \$20,000 within 30 days of the date on which Quants is granted NFA membership.
2. Quants is permanently barred from acting as a principal of an NFA Member.
3. Kisacikoglu is suspended from NFA membership and associate membership for a period of one year from the date of this Decision. If after the conclusion of this one-year period Kisacikoglu applies for NFA membership, he must pay a fine of \$20,000 within 30 days of the date on which Kisacikoglu is granted NFA membership.
4. Kisacikoglu is permanently barred from acting as a principal of an NFA Member.

V

APPEAL

Quants and Kisacikoglu 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.

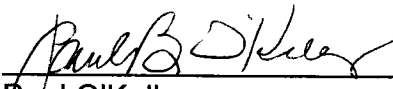
VI

INELIGIBILITY

Pursuant to the provisions of CFTC Regulation 1.63, this Decision and the sanctions imposed by it render Kisacikoglu ineligible for a period of three years 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: 3-11-19

By: 
Paul O'Kelly
Chairperson

/jlw/BCC Cases: Case Files/Quants Capital Management, Inc./Decision (Final)