

SEP 20 2019

**NATIONAL FUTURES ASSOCIATION  
LEGAL DOCKETING**

On July 9, 2018, NFA's Business Conduct Committee issued a three-count Complaint against Fortress and Ashkar (collectively Respondents). The Complaint charged that Fortress failed to maintain minimum adjusted net capital and failed to keep accurate books and records in violation of Financial Requirements Section 5 and Compliance Rule 2-10(a); that Fortress prepared and distributed misleading promotional material in violation of Compliance Rules 2-29(b)(1)-(3) and (d) and 2-39(a); and that Fortress and Ashkar failed to adequately supervise the employees

and agents of Fortress in violation of Compliance Rules 2-9(a) and 2-39(a). On August 7, 2018, Ashkar filed an Answer on behalf of Respondents in which he denied the charges, disputed certain factual allegations in the Complaint, and set out arguments in Respondents' defense.

On March 8, 2019, Respondents filed a request to postpone the hearing, stating that Ashkar would not be able to travel for four weeks due to a medical emergency. The Panel granted Respondents' request on March 11, 2019. After receiving available dates from the parties, on March 14, 2019, the Panel ordered the hearing to be rescheduled to May 9, 2019.

## II

### **EVIDENCE PRESENTED AT THE HEARING**

NFA presented three witnesses at the hearing and introduced a number of documents into evidence. Although properly served with the Notice of Hearing under NFA Rules (Panel Exhibit 1), neither Ashkar nor Fortress appeared at the hearing or submitted any evidence.

A summary of the relevant testimony and exhibits introduced by NFA is as follows:

#### **Tom Plasman**

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

Ashkar withdrew from NFA Membership on February 16, 2019. (NFA Exhibit 1) Fortress withdrew from NFA Membership after February 26, 2019. (NFA Exhibit 2) Joseph Gelet (Gelet) was a forex associated person (AP) of Fortress

between January and March 2013 and from February 2016 until May 20, 2017. (NFA Exhibit 3)

Plasman testified that NFA conducted its first investigation of Fortress in 2014. In June 2014, NFA issued a staff letter finding that Fortress had maintained an adjusted net capital amount less than the amount required over a 12-day period and failed to file notice with NFA as required until contacted by NFA. (NFA Exhibit 4)

NFA conducted examinations of Fortress' main office and its Miami branch office in 2015. NFA's exam report related to the examination of Fortress' main office identified several deficiencies, including unrecorded liabilities that reduced the firm's excess net capital, failure to obtain the required written authorization necessary for a third-party to place trades on a customer's behalf, incomplete "know your customer" and account opening information, inadequate supervision of Fortress' Miami branch office and failure to terminate an AP that was no longer acting in that capacity. (NFA Exhibit 5)

NFA also issued an exam report related to the examination of Fortress' Miami branch office which outlined additional deficiencies, including failure to maintain documentation related to certain cash transactions, failure to supervise an agent's solicitation of customers, using misleading promotional materials on websites, and failure to adopt and enforce written supervision procedures related to the use of agent websites. (NFA Exhibit 6) Fortress filed a response to the branch office exam report stating that it planned to implement a separate accounting and invoicing system, that it was drafting written procedures for future promotional materials and outside business activities and that it had removed the deficient promotional material and would only add

new promotional material under Fortress' new procedures governing the use of promotional material. (NFA Exhibit 7)

In August 2017, NFA commenced an exam of Fortress (the 2017 exam). Plasman was the field supervisor for the 2017 exam. The 2017 exam covered Fortress' cash activity, net capital computation, promotional material, customer records, and general supervision procedures.

Plasman testified that NFA found multiple deficiencies in the 2017 exam, many of which were repeat findings from previous examinations. NFA issued an examination report to Fortress on January 4, 2018 indicating that Fortress again had unrecorded liabilities, had fallen below the minimum net capital requirement and had not provided the required notice to NFA, and had used promotional material that was deficient and misleading. (NFA Exhibit 8) Fortress filed a response to the exam report on January 26, 2018. (NFA Exhibit 9)

According to Plasman, Gelet was not an AP of Fortress at the time of NFA's examination. However, Plasman testified that during the exam Ashkar informed the examination team that Gelet was preparing and maintaining all of Fortress' promotional material.

Plasman also testified that NFA found deficient promotional material on Fortress' main website. In particular, as of August 8, 2017, Fortress' main website listed "Joseph Gelet, Series 3, Vice President Forex Division" as part of the Fortress Capital Team, even though Gelet was not an AP of Fortress at that time. (NFA Exhibit 27) Fortress' main website also asserted that Fortress had "created what we believe to be the best introductory course in the world." (NFA Exhibit 28) According to Plasman,

Fortress was unable to provide any support for that statement. Plasman testified that Fortress also posted to its website a PowerPoint slide entitled "Fun facts about investing" (NFA Exhibit 29) which claimed that the average CTA "makes about 10% per year, since 1980." According to Plasman, Fortress was also unable to support this claim and Fortress failed to accompany the statement about potential for profit with an equally prominent statement about potential for loss.

Plasman testified that Gelet posted other promotional material to Fortress' main website that solicited members of the general public to open forex trading accounts with Fortress when he was no longer an AP of Fortress. Gelet authored four articles soliciting customers that were posted on Fortress' main website on July 25, 2017; July 27, 2017; July 28, 2017; and August 2, 2017. (NFA Exhibit 33) According to Plasman, Ashkar informed NFA staff that Gelet both wrote the articles and maintained Fortress' websites.

Plasman testified that NFA also found deficient promotional material posted to another website run by Fortress called "Fortress Capital Trading Academy," which was accessible through a link on Fortress' main website. The Trading Academy website contained a forex educational program created by Gelet and Ashkar that Gelet and Ashkar were trying to sell to people who wanted to learn more about forex. Access to the Trading Academy website required a username and password, which Fortress offered to the public for a fee of \$1,245 (NFA Exhibit 28). Ashkar represented to NFA that although Respondents had never sold access to the website to anyone, they did provide free access to the Trading Academy site to family, friends and business associates.

The Trading Academy website contained videos and articles produced by Gelet and third-party articles from the internet. The Trading Academy website included a biography of Gelet, which on August 8, 2017, stated that Gelet was a current "expert Forex consultant at Steinmeyer Law, a leading securities class action & anti-trust litigation firm" and that Gelet had developed an "in-depth Forex training course which has helped many Wall St. professionals and international investors understand the nuances of Forex." (NFA Exhibit 26) Plasman testified, however, that Fortress was unable to provide any support for either of those statements.

Plasman testified that the Trading Academy site also included detailed instructions advising clients how to avoid U.S. rules and regulations by opening an account in a foreign jurisdiction under the name of a foreign friend and offering to pay the friend a percentage of the investment profits (NFA Exhibit 30). The article noted that the foreign friend would need a foreign ID and address, but that many foreigners living in the U.S. still maintain foreign addresses.

Plasman testified that the Trading Academy website also included a video featuring Gelet where he provided misleading information regarding NFA's role in regulating the forex industry in the U.S. (NFA Exhibit 32) In the video, Gelet states that NFA is "like a trade organization. Like you are a dentist, you will join the American Dental Association. If you are a psychiatrist, you will join the American Association for Psychiatrists or Doctors of whatever. The NFA is a self-regulatory organization. So NFA members join by choice, we pay our dues, and the NFA does the service for us."

Plasman testified that promotional articles were also posted to the third-party financial website "Seeking Alpha," using Fortress' name and logo on behalf of

Fortress. (NFA Exhibit 31) According to Plasman, Ashkar claimed that he was unaware of the promotional material posted on the Seeking Alpha website and informed the examination team that he did not review the material before it was posted there by Gelet. The Seeking Alpha website contained three posts made in January 2017, two made in February 2017, and two made in August 2017.

In addition to deficient promotional material, NFA's examination of Fortress also uncovered deficiencies in Fortress' financial statements. Plasman testified that Fortress' financial statements obtained at the start of the exam in August 2017 drastically overstated the firm's net assets. Fortress' balance sheet dated June 30, 2017 showed current assets of \$111,375 in four bank accounts. (NFA Exhibit 34) However, one of those accounts purportedly holding \$58,549 was in Ashkar's name instead of Fortress' name, and held only \$950.61, which was significantly less than the reported amount. (NFA Exhibit 35)

Plasman testified that during its testing of Fortress' financial statements, the examination team also found that the June 30, 2017 balance sheet inaccurately reported that Fortress had liabilities of \$2,070 when in fact the underlying accounts reflected outstanding liabilities of more than \$13,000, including liabilities related to a credit card statement, a Comcast bill and a car payment. (NFA Exhibit 36) Plasman testified that these inaccuracies resulted in Fortress falling below its net capital requirement between February and July 2017. During the examination, NFA also determined that the incorrect \$2,070 in liabilities was reflected in the monthly net capital computation reported for each month between February and June 2017. According to Plasman, he would have expected the reported liabilities between February and June

2017 to reflect the credit card statement, Comcast bill and car payment. (NFA Exhibit 37)

Fortress' financial statements included other errors, some of which Fortress repeated in subsequent submissions of "corrected" financial statements to NFA. Fortress also included entries in its commissions receivable that did not correspond to any actual receivable. (NFA Exhibit 41) Plasman testified that Fortress repeatedly included a \$10,000 overstatement of its cash assets in its corrected financial statements submitted to NFA in August and December 2017 and January 2018 even after the error was pointed out three times by NFA. According to Plasman, Fortress also continued to understate the firm's liabilities in the corrected financial statements submitted to NFA in August and December 2017. (NFA Exhibits 42 and 43)

Plasman testified that the corrected financial statements Fortress submitted to NFA on January 12, 2017 contained additional deficiencies related to the commissions receivable balance. The unaudited Form 1-FR that Fortress subsequently submitted to NFA also included deficiencies related to the commissions receivable balance.

Fortress failed to file the required telegraphic notices advising NFA that it was under its net capital requirement for all months between February and July 2017 until repeatedly instructed to do so by NFA. (NFA Exhibits 42 and 44) Respondents finally filed the required telegraphic notices on January 26, 2018. (NFA Exhibit 46) Plasman testified that at that time NFA did not have any more issues with Fortress' books and records.



Plasman testified that at the time the exam commenced in August 2017, Ashkar was the sole AP and principal of Fortress and therefore Ashkar bore responsibility for supervising the bookkeeper who produced the flawed and inaccurate financial statements. Plasman testified that Fortress' audited financial statements prepared prior to the exam, dated December 31, 2016, contained the same errors the NFA exam team identified as of June 30, 2017. (NFA Exhibit 39)

Plasman testified that Fortress did not have adequate procedures related to ethics training, cybersecurity, forex operations and customer risk disclosures. Fortress failed to require any ethics training. With regard to cybersecurity, Fortress did not have an information systems security program (ISSP) when the exam commenced. According to Plasman, midway through the exam, Ashkar provided an ISSP to the exam team which he had copied from an unrelated firm but had failed to appropriately modify to fit Fortress' business model or meet NFA's requirements. (NFA Exhibit 47) For example, the ISSP Fortress submitted to NFA represented that Fortress' operations take place in a secure facility and that Fortress has a Board of Directors, neither of which was true.

**William Masuck**

William Masuck (Masuck) testified substantially as follows:

Masuck is an area financial manager for the Florida Office of Financial Regulation (FOFR). He became familiar with Fortress and Ashkar when FOFR received a referral from the Financial Industry Regulatory Authority (FINRA) and a tip from a member of the public regarding the Respondents. (NFA Exhibit 16) The referral from FINRA consisted of a letter dated January 9, 2017 that enclosed an unsolicited

promotional email dated January 4, 2017 (the January 4 solicitation) that had been sent by Gelet on behalf of Fortress. In response to the referral from FINRA and tip from a member of the public, FOFR opened an investigation into Respondents. Masuck supervised the investigation.

As part of the investigation, FOFR sent Respondents an email on March 7, 2017, attaching the January 4 solicitation and requesting a written explanation of, among other things, the reason the January 4 solicitation had not been provided when FOFR previously requested all of Respondents' advertising files. (NFA Exhibit 19)

Ashkar's March 22, 2017 response indicated that NFA had reviewed the January 4 solicitation, and the solicitation "received no comments by the NFA." (NFA Exhibit 21) Ashkar attached to his response a February 22, 2017 letter (no-comment letter) from Yana Poretsky (Poretsky), a senior analyst in NFA's Compliance Department, stating that NFA had no comments on the revised promotional e-mail template that Ashkar submitted for pre-review on February 20, 2017. Along with the no-comment letter, Ashkar also attached an email solicitation from Gelet on behalf of Fortress dated January 10, 2017 (the January 10 solicitation). (NFA Exhibit 21) Ashkar's March 22 email indicated that NFA's February 22, 2017 no-comment letter related to the January 10 email solicitation.<sup>1</sup>

Masuck testified that the February 20, 2017 promotional material that Fortress sent to NFA for pre-review was never provided to FOFR by Fortress. (NFA Exhibit 14)

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<sup>1</sup> The January 10 email solicitation was substantially the same as the January 4 email solicitation FOFR received from FINRA. (NFA Exhibits 16 and 21)

**Yana Poretsky**

Poretsky, a senior analyst in NFA's Compliance Department, testified substantially as follows:

Poretsky received an email from Fortress on January 14, 2017 requesting review of a proposed promotional email template that Fortress wished to distribute. (NFA Exhibit 10) Poretsky reviewed the promotional email template and on January 27, 2017 sent an email to Respondents that provided comments regarding the January 14 promotional email template. (NFA Exhibit 11) The comments included a request for clarification of Fortress' claimed past performance since Fortress had represented to NFA that it did not have any current customers and a request that Fortress support its claim that its forex trading system would be "great" for IBs, banks, and brokers.

Poretsky testified that later on January 27, 2017, Fortress sent an email to NFA that responded to Poretsky's comments and included a revised draft of the promotional email template, which Poretsky reviewed. (NFA Exhibit 12) On February 9, 2017, she sent Ashkar a letter via email asking for additional clarification on Fortress' response. (NFA Exhibit 13) Fortress responded to NFA on February 20, 2017 (NFA Exhibit 14), including a revised version of the promotional email template which had been significantly shortened.

Poretsky testified that she reviewed and found no issues with the promotional email template submitted by Fortress on February 20, 2017. On February 22, 2017, Poretsky emailed Ashkar a letter indicating that NFA had no comments on the promotional email template that NFA received on February 20, 2017. (NFA Exhibit 15)

Poretsky testified that NFA's February 22, 2017 no-comment letter did not relate to Respondents' January 4 solicitation or the January 10 solicitation that Fortress sent to FOFR, which was substantially the same as the January 4 solicitation. According to Poretsky, Fortress did not send the January 4 or January 10 solicitations to NFA for review and had she reviewed them, she would not have issued a no-comment letter concerning them.

### III

#### **FINDINGS AND CONCLUSIONS**

Fortress was an IB and CTA Member of NFA during the period covered by the Complaint. As an NFA Member, Fortress 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.<sup>2</sup> Ashkar was a principal and AP of Fortress and an NFA Associate Member during the period covered by the Complaint. Therefore, Ashkar was required to comply with NFA Requirements, and NFA has jurisdiction over him for purposes of this action.<sup>3</sup>

Count I of NFA's Complaint alleges that Fortress violated Compliance Rule 2-10(a) and Financial Requirements Section 5 by failing to maintain minimum adjusted net capital (ANC) and by failing to maintain accurate books and records. Count II of NFA's Complaint charges Fortress with violating NFA Compliance Rules 2-29(b)(1)-(3) and (d) and 2-39(a) by preparing and distributing misleading promotional material. Count III of NFA's Complaint further charges Fortress and also charges Ashkar with

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<sup>2</sup> See NFA Compliance Rule 2-14.

<sup>3</sup> See NFA Bylaw 301(b) and NFA Compliance Rule 2-14.

violating NFA Compliance Rules 2-9(a) and 2-39(a) for failing to supervise Fortress' employees and agents in conducting their commodity futures and forex activities on behalf of Fortress. The Panel will address each Count in turn.

***Count I - Failing to Maintain Required Minimum ANC and Failing to Keep Accurate Books and Records***

NFA Financial Requirements Section 5(a) requires IB Members not operating pursuant to a guarantee agreement to maintain adjusted net capital of at least \$45,000. Pursuant to NFA Compliance Rule 2-10(a), each Member must maintain adequate books and records necessary to conduct its business, including among other things, records relating to financial reporting and net capital computations as set forth in CFTC Regulation 1.18.

NFA's case related to Count I was based primarily on documentary evidence in the form of Fortress' own records and explanatory testimony from Plasman. Respondents did not appear at the hearing and did not submit any evidence. The documentary evidence and Plasman's testimony establish that at the time of the June 2017 exam, Fortress' financial statements included as one of Fortress' assets a bank account that was solely in the name of Ashkar. NFA's evidence also establishes that the assets in this account were overstated by more than \$57,000 and that Fortress' financial statements failed to disclose liabilities totaling over \$11,000, including unpaid credit card debt and Comcast invoices. As a result, Fortress was below its minimum net capital requirements from February through July 2017.

Plasman also credibly testified regarding other deficiencies in Fortress' financial statements, including an unchanging liability amount of \$2,070 across several months that did not accurately reflect Fortress' actual liabilities established by NFA

during its examination and indicated that Fortress failed to properly accrue for its actual liabilities over a period of time. Plasman also testified regarding the listing of commission receivables as an asset in the financial statements that Fortress was unable to support.

Plasman provided credible testimony establishing that despite receiving detailed requests from NFA for corrected financial records, from August 2017 until January 2018, Fortress repeatedly submitted and resubmitted deficient financial statements and net capital computations, in some instances introducing new errors.

As noted above, Respondents filed an Answer but did not appear at the hearing. In its Answer, Fortress made a general denial of the Count I charges and a few assertions related to the specific Count I allegations. Although not entirely clear, the Panel believes that Respondents attempted to assert in their Answer that with regard to the credit card debt referenced above, the credit card was not used for Fortress' expenses and Fortress was immediately removed from the credit card account upon notice by NFA. Respondents appear to imply that it was proper (or at least excusable) for Fortress to exclude the credit card debt when calculating its liabilities.

The Panel finds Respondents' assertion to be without merit. Respondents admit that Fortress' name was on the credit card that NFA included in Fortress' unstated liabilities. As a result, even if the credit card was not used for Fortress' expenses, Fortress was still responsible for the credit card debt. It was not until NFA raised questions about the account that Fortress was removed from the credit card and was no longer responsible for liabilities incurred by the credit card. Accordingly, the Panel finds

that Fortress improperly excluded the credit card debt as a liability in calculating its monthly net capital position, which resulted in overstating Fortress' net capital position.

Regarding NFA's allegation that Fortress repeatedly made errors in its financial statements and net capital computations, Respondents assert in their Answer that "w[h]ere errors existed corrections were made in accordance with NFA standards." The Panel finds that this assertion was contradicted by evidence presented by NFA at the hearing, including Plasman's testimony and documentary evidence of deficient financial statements that Fortress submitted to NFA on at least four occasions. This evidence establishes that Fortress repeatedly failed to submit accurate financial statements, despite Plasman providing Fortress with detailed descriptions of the errors in those statements. The Panel therefore rejects Fortress' assertion in its Answer that Fortress made timely corrections to its financial statements.

Accordingly, based on the evidence presented, the Panel finds that Fortress failed to maintain adequate books and records in violation of NFA Compliance Rule 2-10(a) by failing to properly record assets and liabilities and repeatedly submitting inaccurate financial statements and net capital calculations to NFA. More importantly, the Panel also concludes that between February and July 2017, Fortress violated NFA Financial Requirements Section 5 by failing to maintain adjusted net capital equal to or greater than the amount required by NFA Financial Requirements Section 5.

***Count II – Preparing and Distributing Misleading Promotional Material***

NFA's Complaint also alleges that Fortress violated NFA Compliance Rules 2-29(b)(1)-(3) and (d) and 2-39(a) by posting misleading and deceptive promotional material on Fortress' main website, Fortress' Trading Academy website,

and as part of a blog in Fortress' name on a third-party website. NFA Compliance Rule 2-39(a) prohibits, through reference to NFA Compliance Rule 2-36(b)(1), NFA Members and Associates that engage in forex transactions from deceiving or attempting to deceive any forex customer. NFA Compliance Rules 2-29(b)(1)-(3) prohibit Members and Associates from using any promotional material that is likely to deceive the public, contains a material misstatement of fact or omits a fact that makes the promotional material misleading, or mentions the possibility of trading profit without an equally prominent statement of the risk of loss. NFA Compliance Rule 2-29(d) provides that any statements of opinion in a Member's promotional material must be clearly identifiable as an opinion and must have a reasonable basis in fact.

At the hearing, NFA presented evidence consisting of Plasman's testimony and documentary evidence to support the charges related to Fortress' use of misleading and deceptive promotional material. As noted above, Respondents did not appear at the hearing but submitted an Answer in which Respondents address the charges in the Complaint.

There is no dispute that Gelet was no longer an AP of Fortress after May 20, 2017. At the hearing, NFA presented documentary evidence establishing that several months after Gelet withdrew as an AP of Fortress, Fortress' main website listed Gelet as Series 3 certified and VP of the Fortress' forex division. It is the Panel's view that listing Gelet as a VP of Fortress and Series 3 certified and posting articles authored by Gelet that solicit customers after he had withdrawn as an AP of Fortress is misleading and likely to deceive the public to believe that Gelet was still an AP of



Fortress. Accordingly, the Panel finds that Respondents violated NFA Compliance Rules 2-29(b)(1) and 2-29(b)(2).

NFA also presented credible evidence that both Fortress' main website and the Trading Academy website included other deficient promotional material. The main website included a material statement of opinion – that Respondents believe the Fortress Trading Academy program is "the best introductory course in the world" for which Respondents were unable to provide a factual basis. The Trading Academy website also stated that the Trading Academy included an "in-depth Forex training course which has helped many Wall St. professionals and international investors understand the nuances of Forex." NFA also charged this as a statement of opinion that was not identified as such and for which Fortress was unable to provide a factual basis. Although it is not entirely clear to the Panel that this is a statement of opinion, Fortress did not specifically indicate in its Answer that it was not. More importantly, however, NFA testified that Fortress was unable to provide a factual basis for this statement and Fortress did not provide any evidence disputing this. The Panel therefore finds that Fortress violated NFA Compliance Rule 2-29(d) by using promotional material that includes a statements of opinion without demonstrating that the statements have a reasonable basis in fact.

The main website also included a PowerPoint slide that represented that the "average Commodity Trading Advisor makes about 10% per year, since 1980" without providing a statement regarding risk of loss. The Panel therefore also finds that Fortress violated NFA Compliance Rules 2-29(b)(3) by using promotional material that mentions the possibility of profit without providing a statement of the risk of loss.

NFA also presented evidence that Fortress' Trading Academy website contained deficient promotional material, including promotional material that was misleading and deceptive. The Panel acknowledges Respondents' assertion in their Answer that the Trading Academy website was an educational site and does not constitute promotional material. However, during the hearing, NFA presented Plasman's credible testimony that Fortress provided access to the Trading Academy website to about 20 friends, family and business acquaintances. The Panel finds that the Trading Academy website was accessible to individuals who were potential customers of Fortress and therefore any material on the Trading Academy website used to promote Fortress is subject to NFA's rules regarding promotional material.

A biography of Gelet on the Trading Academy site contained two statements that Fortress was unable to support: that Gelet was an expert forex consultant at a leading securities class action and anti-trust litigation firm and, as discussed above, that Gelet had "developed an in-depth Forex training course which has helped many Wall Street professionals and international investors understand the nuances of Forex." These unsupported statements could certainly mislead a potential client to believe that the Trading Academy is an established program developed by a forex expert and vetted by Wall Street professionals. Respondents did not respond to these allegations in their Answer.

NFA also presented evidence of a promotional video featuring Gelet in which Gelet stated that NFA was a trade association similar to the American Dental Association that Members could join by choice, giving the impression that NFA Membership is voluntary. Gelet states in the video that Fortress is not regulated by the

CFTC, which suggests that the CFTC does not have jurisdiction over Fortress. It is the Panel's view that this video clearly contains material misstatements of fact regarding the regulatory framework surrounding Fortress' activities, which might lead the public to believe that Fortress' trading activities are subject to a less rigorous regulatory standard. Respondents did not respond to this allegation in their Answer.

At the hearing, NFA presented testimony and documentary evidence that the Trading Academy site contained promotional material that provided instructions to potential clients on how to avoid U.S. regulations by opening an account in someone else's name. The instructions encourage potential clients to ask a foreign friend to open an account for them in return for a percentage of the client's investment profits.

Respondents claim in their Answer that NFA was citing these instructions out of context. The Panel, however, reviewed the promotional material and disagrees that NFA's presentation of these instructions was in any way out of context. Fortress also asserts in its Answer that it always recommends that clients follow rules and regulations in all jurisdictions. However, they provided no evidence to support this claim and it is contrary to the instructions that clients have a foreign friend open an account for them. Therefore, the Panel finds that their claim is without merit. The Panel notes that Respondents' Answer attempts to justify the practice of opening accounts in the name of a foreign friend by explaining that because it is difficult to make money with a forex strategy in the U.S., opening an account in the name of a foreign friend provides U.S. clients with the opportunity to trade forex strategies with foreign brokers where they would otherwise be banned. In the Panel's view, encouraging customers to intentionally

evade U.S. regulatory requirements designed to protect them is inherently deceptive and misleading.

Based on the above, the Panel finds that Fortress included misleading promotional material on the Trading Academy website in violation of NFA Compliance Rules 2-29(b)(1)-(3) and 2-29(d). It is the Panel's view that when taken as a whole, Fortress' use of promotional material demonstrates an intent to deceive and mislead potential clients. Accordingly, the Panel also finds that Fortress' use of promotional material violates NFA Compliance Rule 2-39(a).

### ***Count III - Failing to Supervise***

NFA Compliance Rules 2-9(a) and 2-39(a)<sup>4</sup> require each Member to diligently supervise its employees and agents in conducting their commodity futures and forex activities and each Associate with supervisory duties to diligently exercise those duties in conducting its commodity futures and forex activities.

At the hearing, NFA presented testimony and documentary evidence that Fortress and Ashkar failed to supervise the firm's activities in several areas. Fortress and Ashkar clearly failed to take adequate supervisory measures with regard to maintaining accurate books and records, as evidenced by the repeated errors in the financial statements discussed above. As noted previously, Fortress and Ashkar included a non-existent asset in their net capital calculations and financial statements and failed to properly accrue liabilities, resulting in Fortress falling below its net capital requirement for a period of five months. These bookkeeping errors also resulted in the inclusion of the non-existent asset in Fortress' 2017 certified financial statement.

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<sup>4</sup> By reference to NFA Compliance Rule 2-36(e).

Although many of the errors were made by Respondents' bookkeeper, Fortress and Ashkar were responsible for maintaining competent third parties to keep accurate books and records, and are ultimately responsible for reviewing the financial statements and ensuring their accuracy.

Based on the evidence presented at the hearing, the Panel finds that Ashkar and Fortress also failed to adequately supervise Fortress' use of promotional material, in particular promotional material posted by Gelet. Plasman provided documentary evidence and testified at the hearing that in addition to the articles Gelet posted on Fortress' website, Gelet also posted promotional articles to a third-party financial website using Fortress' name and logo that Ashkar was unaware of and did not review prior to posting. While Respondents deny in their Answer that the third-party website is connected to Fortress, the Panel notes that the documentary evidence provided by NFA clearly depicts the Fortress Capital logo on the third-party site and finds that Respondents' claim is without merit.

Plasman also credibly testified that Fortress and Ashkar failed to have adequate procedures addressing ethics training, cybersecurity, forex operations and customer risk disclosures in violation of NFA Compliance Rules 2-9(a) and 2-39(a). Although Respondents assert in their Answer that they provided ethics training they did not provide any support for this assertion. In the Panel's view, Respondents' attempt to provide an ISSP to NFA during the examination by inserting Fortress' name into the ISSP of another firm that included procedures inapplicable to Fortress is insufficient and demonstrates Respondents' disregard for NFA requirements. Accordingly, the Panel finds that Ashkar and Fortress violated NFA Compliance Rules 2-9(a) and 2-39(a).

## IV

### PENALTY

In accordance with sanctioning guidance issued by the CFTC, the Panel considers several factors, including the nature and severity of the violations, in determining the appropriate sanction for each Respondent.<sup>5</sup> Fortress and Ashkar have engaged in a pattern of deceptive and misleading conduct and communications. Fortress used misleading promotional material on its websites designed to deceive potential clients as to the reputation and quality of the Fortress Trading Academy by making unsupported claims about the success of the Fortress Trading Academy program. Fortress also advised potential clients to provide false information to brokers on account opening documents in order to avoid U.S. regulatory requirements, many of which are designed to protect those customers.

Even more troubling, the Panel believes that Respondents' actions reflect an unwillingness to follow NFA rules. To begin with, although NFA has cited the firm for financial reporting, net capital, recordkeeping and promotional material violations in prior exams, NFA's most recent exam revealed that Fortress continued to violate the same NFA Requirements related to these important regulatory issues, including its inability to remain in compliance with minimum net capital requirements. Moreover, in the 2017 exam, the firm showed a complete lack of attention to the financial deficiencies identified by NFA and for which NFA required immediate remediation. In fact, during the course of the August 2017 examination, Fortress repeatedly resubmitted deficient

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<sup>5</sup> 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).

financial statements to NFA, often containing the same or similar errors, before they were finally able to produce financial statements that met NFA Requirements. Fortress and Ashkar continue to demonstrate their disregard for NFA Requirements by failing to appear at the hearing without explanation after they requested that the hearing be postponed for several weeks due to a medical emergency.

Finally, NFA presented credible evidence of Respondents' attempt to deceive FOFR by attaching an NFA no-comment letter to an unapproved piece of promotional material and representing to FOFR that the promotional material had been approved by NFA. The Panel believes that the Respondents' conduct before the Florida state regulators is another example of Respondents' disregard for regulatory requirements and demonstrates that Respondents are willing to lie to a regulator to further their own interests.

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

1. Fortress is barred from NFA membership for a period of five years from the date of this Decision. If after the conclusion of this five-year period Fortress reapplies for NFA membership, Fortress must pay a fine of \$25,000 to NFA, due and payable at the time of Fortress' application.
2. Ashkar is barred from NFA membership and associate membership for a period of five years from the date of this Decision. If after the conclusion of this five-year period Ashkar applies for NFA membership or reapplies for NFA associate membership, he must pay a fine of \$25,000 to NFA, due and payable at the time of his application.

V

**APPEAL**

Fortress and Ashkar 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

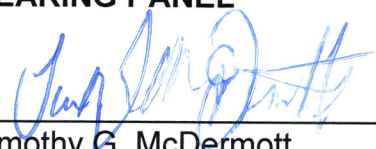
**INELIGIBILITY**

Pursuant to the provisions of CFTC Regulation 1.63, this Decision and the sanctions imposed by it render Ashkar 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: Sept 20, 2019

By: \_\_\_\_\_

  
Timothy G. McDermott  
Chairperson

/jlw(BCC Cases: Case Files/Fortress Capital/Decision)