

Tianyou Asset Management LLC (collectively, the Tianyou Respondents).

Complainants are all represented in these proceedings by Vincent Alfait (Alfait), who controlled their investments.

Complainants allege that their introducing broker (IB)—the IASG Respondents—violated the Commodity Exchange Act (CEA) and/or its regulations by misleading them regarding the risks associated with investing in a fund sponsored by Tianyou Asset Management and the Tianyou Respondents, who Complainants allege also perpetrated the fraud. Specifically, Complainants allege that both the IASG and Tianyou Respondents failed to provide material information regarding “tail risk” for the Tianyou Fund and failed to consider the suitability of investment in Tianyou with respect to the three Complainants. Compl. at 1. These failures purportedly caused Complainants \$553,700.39 in damages.

Respondents counter that in fact Alfait was an active and sophisticated investor who was fully apprised of the risks of his investment in the Tianyou Fund and sourced the investment himself. They argue that Alfait’s losses were caused in February 2020 because of COVID-19 related market volatility, not because of any malfeasance on their part.

For the reasons discussed below, the Complaints in the above-three captioned cases are dismissed against all Respondents with prejudice.

I. Relevant Procedural History

1. Complainants in all three proceedings filed their complaints on March 26, 2021. Because the Complaints bring the same claims against the same set of

Respondents, this Initial Decision refers to the Complaint filed by the Pension Plan (21-R004) as the operative Complaint unless otherwise stated.

2. After a series of communications between Complainants and the Office of Proceedings regarding various deficiencies in the Complaints, the Complaints were served on Respondents on September 15, 2021.

3. The Tianyou Respondents filed their Answers in all three cases on October 12, 2021 and the IASG Respondents filed theirs on October 13, 2021.

4. While discovery was proceeding, I issued a Discovery Order on February 11, 2022 in which I noted, “These three cases involve nine Respondents and contain hundreds of pages of complaint material to advance straightforward claims of misconduct.” Feb. 11, 2022 Discovery Order.

5. In that same Discovery Order, I summarized the central problems with Complainants’ cases as follows:

a. “First, [Respondents] proffered excerpts from account opening and registration documents that appear to address the risks Complainants state were omitted.”

b. “Second, they aver that Complainants increased their investments in the Tianyou Fund after the large loss event of February 5, 2018, suggesting that the potential for large losses was neither unknown to the Complainants nor an investment deterrent for them.”

c. “Third, the IASG Respondents argue that Complainants’ claims are untimely, acting as a complete bar to some or all of the claims here.”

d. “Fourth, it appears that the large losses Complainants sustained in 2020 may have resulted from market turbulence left in the wake of the onset of the COVID-19 pandemic. That the pandemic may have been the cause of their losses—rather than any malfeasance on Respondents’ part—could bar their claims because the damages must be ‘proximately caused’ by the alleged misconduct in order to be actionable. 7 U.S.C. § 18.”

e. “Finally, as the IASG Respondents noted in their Answer, this Office has no jurisdiction over breaches of fiduciary duty absent a violation of the Commodity Exchange Act or its rules.”

6. Having signaled the facially apparent difficulties Complainants would face in successfully prosecuting their case, I ordered targeted discovery to focus on the relevant issues and ordered the parties to attend a status conference on March 22, 2022. Feb. 11, 2022 Discovery Order.

7. At the March 22, 2022 status conference, I informed the parties that I would be dismissing the IASG Respondents from the case and I provided my reasoning for doing so. I gave Alfait an opportunity to respond orally, but let him know that I would issue a decision to that effect.

8. On March 29, 2022, I dismissed the IASG Respondents from each of the three cases pursuant to Commission Rules 12.303, 12.310, and 12.311 for various reasons that I addressed summarily in that decision. I specifically stated that a more comprehensive decision regarding that dismissal would be issued within 60 days.

Proceedings Against The IASG Respondents

9. Rather than wait 60 days for the more comprehensive decision, Alfait appealed the March 29, 2022 Order on April 7, 2022 stating that his “claims of deception and fraud against [the IASG Respondents] and Tianyou [were] inextricably linked.”

10. That same day, Alfait filed a motion to disqualify me because a “fair and impartial proceeding” before me was not possible.

11. On April 22, 2022, I issued an Order denying Alfait’s motions to certify the March 29, 2022 Order for appeal and to disqualify me from the proceeding. Regarding the appeal, there was no Initial Decision or certified question to appeal, and so appeal was unauthorized under Commission Rule 12.402. Regarding the motion to disqualify, I found that Alfait had proffered no basis to disqualify me other than the fact that I had ruled against him.

12. On May 3, 2022—without regard to the Commission Rules governing these proceedings—Alfait filed an appeal of the dismissal to the Commission. He also appealed the decision not to disqualify myself to the Commission.

13. On July 29, 2022, the Commission dismissed Alfait’s appeals in all three cases. With regards to the dismissal of the IASG Respondents, the Commission found the appeal premature as no Initial Decision had been issued or issue been certified. With regards to the disqualification, the Commission noted that to succeed on such a motion, the movant must show bias that stems from an extra-judicial source or be pervasive, which Alfait had not done.

Proceedings Against The Tianyou Respondents

14. During the pendency of the proceedings and appeal with respect to the IASG Respondents, Alfait informed this Office that he had settled his claims against the Tianyou Respondents.

15. On April 12, 2022, Alfait sent an email stating: “A confidential settlement agreement has been reached between the Claimants and Tianyou Asset Management.”

16. On April 22, 2022, this Office sent an email to all the parties stating “The settling parties must file a joint stipulation of dismissal for settlement in accordance with the requirements under Commission rule 12.21. Once our Office receives the joint stipulation, an order dismissing the appropriate parties for settlement will be sent to the parties.”

17. Despite informing this Office that he had settled his case against the Tianyou Respondents, Alfait never undertook efforts to file the appropriate documentation as directed.

18. Instead, a year after I had directed the appropriate paperwork to be filed with respect to the Tianyou Respondents and less than a year after the Commission denied Alfait’s appeals with respect to the IASG Respondents, the Tianyou Respondents filed the fully executed Settlement Agreement on May 19, 2023.

19. That Settlement Agreement was fully executed on April 12, 2022 and was entered into by all three Complainants in these cases as well as the Tianyou Respondents.

20. Specifically, the April 2022 Settlement Agreement released all claims against the Tianyou Respondents as well as their agents, counselors, successors, heirs as well as others upon a payment made within thirty days of the Settlement Agreement.

21. Having received the fully executed Settlement Agreement—which Alfait himself had first referenced to this Office—I issued an Order on May 22, 2023 dismissing all claims against the Tianyou Respondents. Pursuant to that Order, that dismissal would become effective on May 25, 2023 absent objection by any party.

22. On May 26, 2023—after the dismissal had become effective, Alfait objected to the dismissal. He explained his late objection by stating he received the Order when it was sent, but he misread the objection deadline.

23. In his objection, he argued that the Settlement Agreement was an “interim step” and attempted to relitigate the released claims.¹

24. Alfait’s objection included the following arguments:

¹ Alfait sent the objection after the close of business hours on May 25, 2023 and it was received the next morning.

a. Respondents were employing “a ‘sour grapes’ defense; a ‘blame the victim’ strategy common in rape cases in the past employing a ‘good cop-bad copy’ strategy.”

b. Respondents defense that Alfait was a sophisticated investor constituted “a more direct character style attack style akin to defamation.”

c. He also reasserted arguments regarding both the IASG and Tianyou Respondents he had made repeatedly throughout this litigation.

25. Alfait did not aver that the Tianyou Respondents failed to pay him pursuant to the Settlement Agreement.

26. On May 26, 2023, I issued an email directly rejecting his objection as both untimely and as irrelevant, since it was no more than an attempt to relitigate Alfait’s released claims on behalf of all three Complainants. I also stated I would be issuing a more fulsome decision with respect to the IASG Complainants.

27. This prompted responsive emails from Alfait on Friday, May 26, 2023, Saturday, May 27, 2023, and Sunday, June 4, 2023 stating he would like to correct the record and fully address the procedural issues.

28. On Tuesday, June 6, 2023, this Office sent Alfait an email stating a decision would be issued within the next 30 days resolving all outstanding procedural issues.²

29. On Wednesday, June 7, Alfait sent a “motion” entitled “Judicial Prejudice” regarding my decisionmaking in these proceedings.

² I extended that self-imposed deadline by one week on June 28, 2023.

Remaining Issues To Be Resolved

30. There are thus three issues to be resolved in this Initial Decision. (1) Whether Alfait has reason to be released from the Settlement Agreement, under which he has already been paid. (2) Whether Alfait's Motion for Judicial Prejudice warrants relief and, if so, what that relief should be. And (3) Whether there is any additional analysis to be set forth in support of the dismissal of the IASG Respondents.

II. Findings of Fact

a. The Parties

1. Complainant Vincent A. Onorato PhD Pension Plan, Inc. (Pension Plan) (21-R004), was controlled solely by Alfait during the relevant time and invested roughly \$750,000 in the Tianyou Fund from June 2016 through November 2019.

2. Complainant Vincent Onorato as Trustee of Alfait Living Trust (Alfait Living Trust) (21-R005), was controlled solely by Alfait during the relevant time and invested roughly \$700,000 in the Tianyou Fund from September 2017 through November 2019.

3. Complainant Ambyr Mahelani Fiona Alfait (Fiona Alfait) (21-R006), had a joint account created by and controlled by her father Vincent Alfait (Alfait), during the relevant time and invested roughly \$185,000 in the Tianyou Fund from January 2019 through January 2020.

4. Respondent IASG is a registered IB and Commodity Trading Advisor (CTA).
5. Respondent Claudia Dubuque is a registered Associated Person (AP) of IASG and served as Alfait's broker from 2015 through the relevant time period.
6. Respondent JonPaul Jonkheer is registered as the Principal of IASG.
7. Tianyou Asset Management LLC is a CFTC-registered commodity pool operator (CPO) and CTA. Tianyou is the investment management firm that operates and is the General Manager of the Tianyou Fund, L.P. (the Fund).
8. Respondent Bill Zhan is Tianyou's Founder and Managing Director and a registered AP and Principal of Tianyou Asset Management.
9. Respondent Navid Khalili is Tianyou's Chief Operator Officer and a registered AP and Principal of Tianyou Asset Management.
10. Respondent Jonathan Peter Ho is a Managing Director at Tianyou and a registered AP of Tianyou Asset Management.

b. Alfait's Relationship With The IASG Respondents

11. Alfait first contacted IASG in 2011 to request more information about a CTA listed on IASG's website.
12. Although he did not invest at that time, he subsequently began working with Claudia Dubuque, and in January 2015 he used her services to invest in CTA QTS Capital Management LLC. Alfait remained invested with this CTA until June 2016.

13. Then in October 2015, again using Claudia Dubuque as his broker, Alfait invested in another CTA—Jaguar Investments Ltd.

14. Alfait further availed himself of Claudia Dubuque’s services in February 2016, when he opened a futures trading account with FCStone in order to invest in a third CTA—Ring Capital Management LLC. That CTA experienced a 29% drawdown, and Alfait requested that IASG—his introducing broker—reimburse him for the losses sustained by Ring Capital. IASG Resp. Ans. Ex. 1.

15. When requesting the reimbursement, Alfait stated “I am a high net worth individual who has been investing in hedge funds and private placements for 30 years. I have traded for myself with much success using both a technical and fundamental analysis.” *Id.* Given his expertise, he believed there were “operational shortcomings” at IASG that warranted reimbursement of his losses. *Id.*

16. This exchange clearly troubled Jonkheer, who wrote, “Your history with IASG suggests we have not met your expectation of service. It worries me that perhaps IASG will have difficulty ever meeting your needs.” He went on to say that “perhaps a different firm would be better suited” for Alfait’s needs and offered to help transition the business elsewhere. *Id.*

17. Alfait refused, at least in part because he considered Claudia Dubuque to be “sincere, honest, hardworking and conscientious.” *Id.*

18. Alfait subsequently identified another CTA from his research—Blackhealth Fund Management, and Claudia Dubuque acted as his broker when he invested in a managed account with Blackhealth.

c. IASG Respondents And Alfait's Investment In Tianyou Fund

19. In 2016, Alfait read about the Tianyou Fund, L.P., offered by Respondent Tianyou on IASG's website. Although Claudia Dubuque provided some information about the CTA and the Fund to Alfait, she advised him to reach out to Tianyou's principals since she was not authorized to work with those funds. Compl. at 8.

20. Claudia Dubuque felt unauthorized to work with Alfait with regards to the Tianyou Fund because of securities regulation concerns. Although non-Respondent IASG Alternatives, LLC was an SEC-registered broker-dealer, it had not completed detailed due diligence procedures on the Tianyou Fund at the time Alfait chose to invest in 2016.

21. In May 2016, Claudia Dubuque assumed Alfait had spoken with IASG Respondent Greg Taunt, who was more knowledgeable about SEC-related funds, before investing at Tianyou and referred to that assumed contact in an email to Alfait. Alfait replied "No, did not speak with Greg. Don't know him. You had written I should submit the paperwork directly with Tianyou." Compl. Ex. 8 (Email from Alfait to Dubuque (May 4, 2016)). Thus Alfait reached out directly to Tianyou without using the IASG Respondents as intermediaries.

22. Then almost two years later, in January 2018, IASG Respondent Robert Dubuque obtained his securities license and became registered with non-party IASG Alternatives LLC. At that time Robert Dubuque sent Alfait an email stating, "Now that IASG is registered as a broker dealer we can offer fund products.

Bill Zhan, Tianyou’s manager, has agreed to compensate us on your allocations now that our registration is complete.” IASG Resp. Ans. Ex. 2.

23. To that end, Robert Dubuque stated that IASG could receive compensation if Alfait completed three pages of paperwork. He further noted that “It would not add any cost to [Alfait], and just allow us to be paid.” *Id.*

24. A few days later, Alfait responded, “Please advise the basis for seeking compensation for an investment I sought out and executed, and before you could offer the investment.” *Id.*

25. In a second email, Alfait further wrote, “I identified and pursued Tianyou through my own search.” *Id.*

26. Robert Dubuque wrote back that he understood Alfait’s discomfort signing the documents, and those broker agreements remained unexecuted.

d. Circumstances Around Tianyou Investment And Disclosures

27. Alfait thus contacted Tianyou directly in or around April 2016 about investing in the Fund. Tianyou Resp. Ex. 16 (Email from Khalili to Alfait (April 5, 2016)).³

28. In response to Alfait’s inquiries, Khalili spoke with him on April 5, 2016, and sent him a number of documents for his review by email that same day. *Id.*

³ The Tianyou Respondents produced their exhibits on March 25, 2022 as part of the discovery process, rather than alongside their Answer.

29. These documents included the Fund's Private Placement Memorandum (PPM), Limited Partnership Agreement, and the Subscription Document.

30. The PPM plainly disclosed the risks of investing in the Fund. For example, it stated:

YOU SHOULD BE AWARE THAT COMMODITY INTEREST TRADING CAN QUICKLY LEAD TO LARGE LOSSES AS WELL AS GAINS. SUCH TRADING LOSSES CAN SHARPLY REDUCE THE NET ASSET VALUE OF THE POOL AND CONSEQUENTLY THE VALUE OF YOUR INVESTMENT IN THE POOL. IN ADDITION, RESTRICTIONS ON REDEEMPTIONS MAY AFFECT YOUR ABILITY TO WITHDRAW YOUR PARTICIPATION IN THE POOL.

Tianyou Resp. Ex. 1 (PPM at 2 (capitalization in the original)).

31. The PPM also disclosed a number of risk factors that potential investors were advised to consider, including but not limited to:

- “An investment in the Partnership involves a high degree of risk. . . . A Limited Partner should be aware that it may lose all or part of its investment in the Partnership.” PPM at 15.
- “Risk of Loss. A Limited Partner could incur substantial, or even total, losses on an investment in the Partnership. The Limited Partnership Interests are only suitable for persons willing to accept this high level of risk.” *Id.*
- “Risk of Investments Generally. All investments risk the loss of capital. No guarantee or representation is made that the Partnership’s investment program will be successful. *Certain investment techniques of the Partnership can, in certain circumstances, substantially increase the impact of adverse market movements to which the Partnership may be subject. In addition, the Partnership’s investments may be materially affected by conditions in the financial markets and overall economic conditions occurring globally and in particular countries or markets where the Partnership invests. The Partnership’s methods of minimizing such risks may not accurately predict future risk exposures.*” *Id.* at 15-16 (emphasis added).

32. Alfait responded in an email to Khalili on April 9, 2016 that he “finally had time to go over this information.” Tianyou Resp. Ex. 17.

33. In addition to affirming that he reviewed the material, Alfait plainly did his own due diligence. On April 27, 2016, Alfait wrote in an email “It looks like you’ve had your weakest 3 month period this January through March.” In that same email he asked a series of questions about that period. Tianyou Resp. Ex. 18.

34. By email dated April 28, 2016, Alfait informed Khalili that he intended to invest in the Fund. *Id.*

35. To that end, Khalili mailed a Subscription Agreement on May 2, 2016 to Alfait to be executed before initiating the investment. Tianyou Resp. Exs. 4-6, 19-20.

36. Alfait completed the paperwork related to his investments in the Fund shortly thereafter. Tianyou Resp. Exs. 4-8.

37. In that paperwork, Alfait checked the box on the investor suitability questionnaire that he was not “relying on the knowledge and expertise of another person in making” the Fund investment on behalf of the Pension Fund.

38. In December 2016, several months after initially investing in the Tianyou Fund, Alfait sought advice with respect to his investments from Bill Maher, a founding principal of Miller Hamilton LLC, which according to its website has helped place over \$4 billion for private equity and hedge funds. <https://www.hamiltonmiller.com>.

39. Miller observed that some of Alfait's investments, including that in the Tianyou Fund, were "explicitly short volatility" strategies and warned that he was "ADAMANTLY opposed" to such strategies because "[i]f you are using these strategies as a hedge they will fail when you need them most." IASG Resp. Ans. Ex. 3.

40. Alfait shared his concerns with Claudia Dubuque in December 2016, who replied:

Bill nailed it. Short Vol programs always look great month to month. When an unusual event happens their open positions are vulnerable to losses, and if a client can stay in during a heavy loss, they can be slow to recover. I do not recommend a book of short vol traders. There are other strategies that add diversification and alpha and won't be as vulnerable to the next news, economic or weather event.

IASG Resp. Ans. Ex. 3.

e. Alfait's Investor Experience And Sophistication

41. When Alfait first made his June 2016 investment on behalf of the Pension Plan, he filled out an "Accredited Investor" certification, confirming his personal net worth exceeded \$1,000,000 excluding the value of his primary residence.

42. Alfait also completed an Investor Suitability Questionnaire on behalf of the Pension Plan, in which he confirmed he had extensive investment experience, including in domestic and international stocks, mutual funds, bonds, real estate limited partnerships, investment partnerships, hedge funds, equity derivatives, options, commodity futures, and oil/gas partnerships. Tianyou Resp. Exs. 7-9.

43. In September 2017, when Alfait decided to invest \$150,000 with the Fund on behalf of Alfait Living Trust, he completed the subscription documents again on behalf of that new investor. In that document, he confirmed that the Alfait Living Trust had assets of over \$5,000,000. Tianyou Resp. Ex. 5.

f. Total Investments Made By Complainants

44. In June 2016, Alfait made an initial investment in the Fund of \$200,000 on behalf of the Pension Fund.

45. Over a year later, in September 2017, Alfait invested another \$150,000 in the Fund, this time on behalf of the Alfait Living Trust.

46. In February 2018, the Fund sustained a substantial draw-down, losing a quarter of its value over the course of several days.

47. Despite the sudden decrease in value, Alfait kept his monies invested in the Fund.

48. In January 2019, Alfait invested an additional \$250,000 into Alfait Living Trust's account as well as \$250,000 in the Pension Plan account.

49. Also in January 2019, he opened a joint account with his daughter, Fiona Alfait, and invested \$150,000 in that joint account.

50. Several months later, in November 2019, Alfait invested \$300,000 in the Pension Plan account as well as \$300,000 into Alfait Living Trust's account.

51. In January 2020, Alfait also invested an additional \$35,000 into the joint account held with his daughter.

52. All told, Alfait invested a total of \$1,635,000 into the Fund from June 2016 through January 2020 on behalf of the Pension Plan, the Alfait Living Trust, and his daughter.

g. Tianyou Communications And Performance During Complainants' Investments

53. Starting in July 2016, Alfait received monthly and year-to-date performance data, Tianyou Resp. Ex. 24, as well as a one-page Fund data sheet. The Fund data sheet identified information such as the number of winning and losing months, as well as the worst monthly drawn down since the Fund's inception.
Id.

54. By email dated December 13, 2016, Alfait asked, "Is Tianyou a low vol strategy and if so what measures are in place to mitigate the risks?" Tianyou Resp. Ex. 30. Khalili responded in the same email:

We are not a low vol strategy. The biggest risk to our strategy is a fat tail risk. If we don't react we can potentially get hurt and suffer possibly big losses. . . . We have developed a strict investment process [and] we have developed an in-house risk mitigation system where we monitor risk by absolute drawdown and delta exposures. We have a Rule Based Risk Management system that was developed in-house and we adhere to these rules strictly.

55. In January 2018, Alfait sent an email to Bill Zhan after reading Tianyou's Annual Investor Letter. In that email he asked: "You make the case clear that volatility benefits your strategy, but what a sudden large drop of 20% or so, quite possible and growing in the current market environment." Tianyou Resp. Ex. 32. Khalili responds in the same email:

Bill says that it all depends on how the 20% drop occurs. It is impossible for us to say that it can or cannot hurt us. . . . It is

impossible to make statements in a vacuum. However, black swan events can potentially hurt us.

56. In February 2018—within a month of this email exchange—the Fund had its worst monthly performance since inception, losing 25% that month.

Tianyou Resp. Ans. at 13.

57. On March 14, 2018, Alfait wrote to Khalili: “Looks like Tianyou is not as resistant to sell offs as thought, -15% projected.” Tianyou Resp. Ex. 36.

58. Despite this observation and these losses, Alfait not only remained invested but continued to invest additional monies into the Fund.

59. In February 2020, the Fund experienced a significant drawn down of over 38% in the global sell-off triggered by the onset of the COVID-19 pandemic.

60. After a back-and forth between Alfait and Tianyou about what went wrong, Alfait closed the three accounts on behalf of the Complainants in April 2020.

III. Legal Discussion

A. The Settlement Agreement between Complainants and the Tianyou Respondents is valid.

On April 12, 2022, each of the Complainants and Alfait “forever release[d] and discharge[d] the Tianyou Respondents” and a broad array of their current, former, and future agents and successors “from any and all manner of actions,” defined broadly, “which Complainants ever had, now has or hereafter may have” against them. Settlement Agreement ¶ 2. They signed that document and agreed to such release upon the payment of a sum of money pay the Tianyou Respondents to him within 30 days of execution. Alfait then sent this Office an email stating

that he had entered into a Settlement Agreement with the Tianyou Respondents. Despite this Office informing him that he should file a stipulation of voluntary dismissal to that end, Alfait made no other moves to actually release the claims.

Instead, Alfait now objects to dismissing the claims against the Tianyou Respondents pursuant to the Settlement Agreement for three reasons: (a) the appropriate paperwork was never filed, (b) Respondents' defenses are unkind and non-meritorious, and (c) he believes the evidence and arguments he has already submitted make clear his claims should prevail, apparently rendering the Settlement Agreement null and void. None of these arguments provide any basis for invalidating the Settlement Agreement.

“Generally, when the parties' intent is clearly and unambiguously expressed in a written agreement, the agreement stands on its own.” *Violette v. First Options of Chicago*, CFTC Dkt No. 95-R128, 1997 WL 71438, at *3 (Feb. 20, 1997). In this case, the Settlement Agreement language is plain in that it broadly released any and all claims by Complainants against the Tianyou Respondents upon payment. There is no language in the Settlement Agreement to suggest that the release was intended to be partial or interim only.

But that is not the end of the inquiry, because settlement agreements such as this one can be voided if there is any evidence presented that they were entered into in bad faith. *Hills v. Barschi et al.*, CFTC Dkt. No. 00-R116, 2002 WL 253907 (Feb. 22, 2002). The question becomes whether any of Alfait's objections to the Settlement Agreement suggest bad faith on the part of the Tianyou Respondents.

The first objection—that the stipulation of dismissal was never filed—does not speak to bad faith or a reason to invalidate the Settlement Agreement. The June 22, 2023 Order dismissed the claims against the Tianyou Respondents pursuant to Commission Rule 12.21, which allows for dismissal only upon the submission of a “stipulation of dismissal, duly executed by all of the complainants and each respondent.” 17 C.F.R. § 12.21(a). If such a stipulation were filed, I would have no choice but to issue an order of dismissal. 17 C.F.R. § 12.21(c). But no joint stipulation was ever filed, and the dismissal of the claims pursuant to Rule 12.21 was an error. The dismissal should have been made pursuant to Commission Rule 12.308(c) and I amend that June 22 dismissal here to reflect that change. Alfait’s first argument amounts to a change in form of the dismissal, but not the substance of the dismissal.

Alfait’s second and third objections pertain not to the Settlement Agreement itself but to the Tianyou Respondents’ litigation strategies or relative substantive demerits. But neither of these arguments—even if true—can invalidate the Settlement Agreement because neither of them is relevant to the question of whether the Tianyou Respondents acted in bad faith when signing the Settlement Agreement. What could show bad faith and invalidate the Settlement Agreement is any evidence that the Tianyou Respondents did not pay the required amount under the Agreement. *Hills*, 2002 WL at 253907. But Alfait makes no argument or presents any evidence that the Tianyou Respondents failed to make that payment.

To the extent there was any bad faith amongst the settling parties, that was plainly on the part of Alfait himself. He released all claims broadly against the Tianyou Respondents, informed this Office he had done so, collected his monies under the Settlement Agreement, then failed (or refused) to file the paperwork to undertake his reciprocal obligations under the Settlement Agreement, and finally attempted to persuade this Office that he should not be held to an Agreement he executed.

Having released his claims against the Tianyou Respondents, and having proffered no evidence that the Tianyou Respondents acted in bad faith, all claims against the Tianyou Respondents in each of these three proceedings are dismissed with prejudice pursuant to 12.308(c) because there are no longer any claims cognizable in reparations. 17 C.F.R. § 12.308(c).

B. Alfait's Motion for Judicial Bias warrants no relief.

In a Motion for Judicial Bias filed June 7, 2023, Alfait argued (1) adverse rulings, (2) the time it has taken to resolve these proceedings, and (3) the contradictory and complex nature of the preceding Orders demonstrate judicial bias. Although Alfait does not specifically seek any relief in his motion, I construe his Motion for Judicial Bias as a Motion to Disqualify the Administrative Judge pursuant to Commission Rule 305(b).

In its July 29, 2022 Order, the Commission ruled that “to succeed on a motion to disqualify, the movant must show bias that stems from an extra-judicial source or manifests deep-seated favoritism or antagonism that would make fair judgment impossible.” Commission Order at 2 (July 29, 2022) (internal quotation marks and

citations omitted). It further ruled that the allegation that “one or several of the Administrative Judge’s factual findings are incorrect, without more,” does not rise to either an extrajudicial source of bias or pervasive bias. *Id.*

Although there are a panoply of objections Alfait has with respect to the decisionmaking in these proceedings, most of them are related to adverse rulings. The same reasoning the Commission provided in its July 29, 2022 Order apply here with respect to the adverse rulings and their failure to warrant a finding of pervasive bias.⁴ There are, however, three arguments Alfait makes meriting further scrutiny with respect to my own bias and whether it is pervasive.

First, he argues that the short time frame I provided the parties to object to the dismissal pursuant to the Settlement Agreement was unnecessarily burdensome for a self-represented litigant. I issued that Dismissal Order on Monday, May 22, 2023 and ordered that it would be effective by Thursday, May 25, 2023 absent objection. Three business days to file an objection, or an extension of the time to file an objection, does not seem burdensome. This is particularly true because (a) the issue of the settlement documents had been outstanding for many months, and (b) in his objection email Alfait admitted that he misread the objection deadline.

Second, he argues that approximately one year has lapsed with inaction before the resolution of these proceedings. The Commission issued its Order with

⁴ Alfait does not point to any extra-judicial source of bias that would prevent me from fairly adjudicating these proceedings, nor do I know of one. Therefore, I limit the discussion to the issue of whether there is any “pervasive bias.”

respect to the appeals regarding the first Motion to Disqualify and the dismissal of the IASG Respondents on July 29, 2022. Further, this Office was waiting for an update with regards to the Settlement Agreement—which the Tianyou Respondents provided two months ago on May 19, 2023. This time frame also does not, even when combined with the other arguments around bias, rise to the level of pervasive bias.

Finally, Alfait contends that the Orders and communications from this Office have been complex and confusingly written. Having reviewed the preceding Orders, status conference transcript, and other communications, I do not find that they were written in ways to confuse Complainants.

In all, I find that there is no evidence in the record to suggest that pervasive bias has prevented me from adjudicating these proceedings impartially, and I deny Alfait's second motion to disqualify.

C. All claims against the IASG Respondents are untimely.

In their Answer, the IASG Respondents averred that Complainants' claims against them were time-barred as an affirmative defense. CEA Section 14(a)(1) allows actions to be brought "within two years after the cause of action accrues." 7 U.S.C. § 18(a)(1).

In the reparations forum, a customer's cause of action accrues, and the two-year limitations period begins to run, when a complainant discovers the wrongful activity underlying his claim or, in the exercise of reasonable diligence, should have discovered the wrongful activity. Accrual does not wait for a complainant to flesh out the details of the malfeasance or determine the legal remedies that are available to him.

Lee v. Lee, CFTC Dkt No. 06-R054, 2007 WL 776613, at *2 (March 13, 2007)
(internal quotation marks and citations omitted).

All claims against the IASG Respondents are untimely because they are outside the two-year statute of limitations. Alfait made his first investment in the Tianyou Fund in June 2016 on behalf of the Pension Plan. To the extent Alfait was ever “introduced” to the Fund by any IASG Respondent, it was in 2016 when he first sourced the investment. His correspondence with Respondent Claudia Dubuque before his investment in the Fund took place largely in February 2016. Compl. Exs. 6-9 (emails between Claudia Dubuque and Alfait). Then in May 2016, Respondent Claudia Dubuque attempted to refer Alfait to Respondent Gregory Taunt in order to complete the Know Your Client protocol pursuant to SEC regulations and to provide due diligence on Tianyou, Alfait responded that he had not spoken to Taunt and that he was corresponding directly with Tianyou. Compl. Exs. 7-8 (emails between Claudia Dubuque and Alfait). Finally, Alfait reached out to Respondent Claudia Dubuque in December 2016 about concerns he had about the Tianyou Fund’s ability to perform in adverse market conditions in December 2016 and Claudia Dubuque echoed his concerns. IASG Resp. Ans. Ex. 3.

Therefore, IASG’s role with respect to the Tianyou investment, was over by year-end 2016. Using 2016 as the accrual date, Alfait’s claims—filed in March 2021—were brought roughly three years too late.

Even if that date were too conservative, the last possible date Alfait’s claims could have accrued against the IASG Respondents was February 2018. February

2018 was the date the Alfait understood there was a risk of large loss events in the Fund. In February 2018, the Tianyou Fund lost 25% of its value due to unprecedented volatility on February 5, 2018. Tianyou Resp. Ans. at 13. To the extent Complainants were unaware of tail risk before February 2018, the large loss event of February 2018 dispels any possibility that the tail risks were unknown or concealed by the IASG Respondents as of that date. But even using February 2018 as the accrual date renders the March 2021 Complaints untimely.

Alfait argues that April 2020 should serve as his date of accrual, not these previous dates, making his Complaints timely. In April 2020, Alfait corresponded with Gregory Taunt after Complainants experienced their February 2020 losses in the Tianyou Fund, and he argues this correspondence tolls their claims. But Gregory Taunt in 2020 said nothing that Claudia Dubuque had not said in 2016. *Compare* IASG Resp. Ans. Ex. 3 (email from Dubuque to Alfait (Dec.14, 2016)) (noting short volatility programs are always vulnerable to losses), *with* Compl. Ex. 37 (email from Taunt to Alfait (April 13, 2020)) (noting all short volatility programs have tail risk exposure). Further, he said nothing Alfait should not have realized after the large loss event of February 2018. Nothing about those spring 2020 emails tolls the deadline to bring these three Complaints against the IASG Respondents, and they are time barred.

D. Alfait was aware of the risks of investing in the Tianyou Fund, foreclosing claims against the IASG Respondents.

Even if these Complaints were not time-barred, it is plain from the evidence in the record that Alfait was well aware of the risks of the Tianyou Fund on

investment. In order to prevail on a fraud claim under the CEA, a complainant must show “(1) a material misrepresentation, (2) scienter, (3) reliance [on that misrepresentation] and (4) damages.” *Chenli Chu v. Peregrine Fin. Group, Inc.*, CFTC No. 07-R029, 2013 WL 4785177, at *6 (CFTC Sept. 5, 2013) (discussing elements of fraud under CEA § 4b(a)(2); 7 U.S.C. § 6b(a)(2)). Each of these elements must be proved by a preponderance of the evidence. *In re Citadel Trading Co.*, CFTC Nos. 77-8, 80-11, 1986 WL 66170, *9 (CFTC May 12, 1986) (noting judge must determine “what the preponderance of the evidence shows most likely did happen”). Where the documentary evidence is sufficient, there is no need for testimonial evidence, and entire proceedings or issues may be disposed of without oral hearing. 17 C.F.R. § 12.311. Here, the documentary record plainly demonstrates that the IASG Respondents in fact disclosed the relevant risks with respect to the Tianyou Fund, foreclosing any possibility that Complainants could prevail on their fraud claims even with additional evidence.

Firstly, at the advice of Claudia Dubuque from IASG, Alfait corresponded directly with the Tianyou Respondents to gain information about the Fund. The Tianyou Respondents provided Alfait the 2016 Private Placement Memorandum (PPM) for the Tianyou Fund, which disclosed the following risks. Tianyou Respondents Ex. 16 (Email from Khalili to Alfait (April 5, 2016) (attaching several Fund related documents for review).

- ***“An investment in the Partnership involves a high degree of risk. No guarantee or representation is made that the Partnership’s investment program will be successful. A Limited Partner should be aware that it may lose all or part of its investment in the Partnership.*** Prospective

investors should carefully consider the risks involved in determining whether an investment in the Partnership is a suitable investment, including the risks discussed below. Prospective Limited Partners should consult their own legal, tax and financial advisers to determine whether to invest in the Partnership.” Tianyou Ex. 1 (2016 Private Placement Memorandum at 15) (emphasis added).

- “Risk of Investments Generally. All investments risk the loss of capital. No guarantee or representation is made that the Partnership’s investment program will be successful. Certain investment techniques of the Partnership can, in certain circumstances, substantially increase the impact of adverse market movements to which the Partnership may be subject. ***In addition, the Partnership’s investments may be materially affected by conditions in the financial markets and overall economic conditions occurring globally and in particular countries or markets where the Partnership invests. The Partnership’s methods of minimizing such risks may not accurately predict future risk exposures.***” *Id.* at 15-16 (emphasis added).
- “Futures Trading is Volatile and Speculative. Futures markets are highly volatile. ***Futures contracts, are influenced by, among other things, changing supply and demand relationships, governmental actions, agricultural and commercial trade programs and policies, national and international political events, national and international economic events, weather and other natural occurring phenomena, and prevailing psychological characteristics of the marketplace.***” *Id.* 18 (emphasis added).

Alfait admitted that he reviewed the PPM within a few days of receiving it, so he was aware of these risks before investing in the Tianyou Fund. Tianyou Resp. Ex. 17 (Email from Alfait to Khalili (April 9, 2016)).

Secondly, after already making an investment, in December 2016, Alfait undertook to educate himself further about the risks of investing in the Tianyou Fund. Every source he queried reiterated the potential for heavy losses. He first emailed Bill Miller, at hedge fund Miller Hamilton. Miller observed that some of his investments were short volatility investments, which troubled him because, Miller wrote:

There is no way to know when it stops working, but when it does it can be ugly... I am ADAMANTLY opposed to short vol strategies. I have seen too many fail. They can be very sexy traps as they often exhibit very smooth performance (low standard deviation and high sharpe) before they fail. If you are using these strategies as a hedge they will fail when you need them most.

IASG Resp. Ans. Ex. 3. Next he reached out to Claudia Dubuque with these concerns, who responded:

Bill nailed it. Short Vol programs always look great month to month. When an unusual event happens their open positions are vulnerable to losses, and if a client can stay in during a heavy loss, they can be slow to recover. I do not recommend a book of short vol traders. There are other strategies that add diversification and alpha and won't be as vulnerable to the next news, economic or weather event.

Id. Seeking further clarity about these risks, he emailed Khalili on December 13, 2016, asking “Is Tianyou a low vol strategy and if so what measures are in place to mitigate the risks.” Tianyou Resp. Ex. Khalili responded: “We are not a low vol strategy. ***The biggest risk to our strategy is a fat tail risk. If we don't react we can potentially get hurt and suffer possibly big losses.***” Tianyou Resp. Ex. 30 (Email from Khalili to Alfait (December 15, 2016)) (emphasis added). Khalili went on to explain their risk mitigation procedures, but never diluted his first disclosure of the “fat tail risk.”

Thirdly, this tail risk disclosure was reiterated two years later in email communications between Alfait and the Tianyou Respondents in January 2018. On January 19, 2018, Alfait emailed Bill Zhan after receiving the annual letter, asking what happens to the investment in the case of “a sudden large drop of 20% or so, quite possible and growing in the current market environment.” Tianyou Resp. Ex. 32 (Email exchange between Alfait, Zhan and Khalili (January 17 through January

21, 2018)). Khalili responds: “Bill says it all depends on how the 20% drop occurs. It is impossible for us to say that it can or cannot hurt us.” He goes on and states, “[B]lack swan events can potentially hurt us. Risk Management plays a very important part of our program. Every strategy has its own inherent [*sic*] risks and so does this particular strategy. It is important for our investors to understand this.” *Id.* Again on January 2, 2018 Khalili informs Alfait by email, “All attempts will be made to keep the monthly losses below 10% based on our rules. ***Of course it does not mean the fund cannot lose more than 10% in an illiquid market or a gap down or up markets.***” Tianyou Resp. Ex. 34 (email from Khalili to Alfait (January 22, 2018)) (emphasis added). And then in February 2018 the Tianyou Fund experienced large losses. Alfait himself acknowledged that the Tianyou Fund was not as “resistant to sell offs as thought.” Tianyou Resp. Ex. 36 (email exchange between Khalili and Alfait (March 14 & 15, 2018)).

These collective disclosures by the Tianyou and IASG Respondents, and communications between Alfait and various individuals, only served to underscore what Respondent Claudia Dubuque—Alfait’s main IASG contact—had already disclosed in December 2016: that funds like Tianyou could lose a lot of money quickly if the market turned. This strongly worded disclosure forecloses any claims Alfait may have had against the IASG Respondents for any material omissions or misrepresentations with respect to the Tianyou Fund.

E. The question of whether Alfait sourced the Tianyou Fund investment himself need not be decided.

If Alfait bypassed the IASG Respondents and relied on himself and his own research when investing in the Tianyou Fund, that bypassing might also foreclose any claims of fraud against the IASG Respondents. And there is evidence demonstrating that Alfait, who directed the investments of the three Complainants, sourced the Tianyou Fund investment independently. For example, when Respondent Claudia Dubuque suggested Alfait spoke with Greg Taunt before investing at Tianyou, Alfait replied “No, did not speak with Greg. Don’t know him. You had written I should submit the paperwork directly with Tianyou.” Compl. Ex. 8 (Email from Alfait to Dubuque (May 4, 2016)). Then in 2018, when Respondent Robert Dubuque asked Alfait to sign broker agreements with respect to Alfait’s investment in the Tianyou Fund so that IASG could be compensated for Alfait’s investment, Alfait responded, “Please advise the basis for seeking compensation for an investment I sought out and executed, and before you could offer the investment.” IASG Resp. Ans. at 4-5 & Ex. 2. In a second email, Alfait further wrote, “I identified and pursued Tianyou through my own search,” *id.*, and those IASG broker agreements went unexecuted. Moreover, Alfait plainly corresponded directly with the Tianyou Respondents without using the IASG Respondents as intermediaries. Although this suggests that Alfait relied on his own research and communications in managing the Tianyou Fund investment, there is also email evidence in the record that the Complainants were considered IASG clients by the

Tianyou Respondents. Tianyou Resp. Exs. 17 (email from Alfait to Khalili (April 9, 2016)); and 18 (email from Alfait to Khalili (April 18, 2016)).

To the extent there is a factual dispute regarding this issue in the record, I need not decide this one way or another because the time-bar and the finding that the IASG Respondents did not mislead Alfait are independent bases to dismiss the claims against the IASG Respondents.

CONCLUSION

Alfait settled and released his claims against the Tianyou Respondents and there is no basis for nullifying that executed and fulfilled Settlement Agreement. And the record makes clear that the claims against the IASG Respondents are time-barred and barred by the disclosures the IASG Respondents and others made with regard to the nature of the risks of investing in the Tianyou Fund. For these reasons, all claims against each of these Respondents in all three proceedings are dismissed with prejudice pursuant to Rule 12.308(c).

Dated: July 12, 2023

/s/ Kavita Kumar Puri
Kavita Kumar Puri
Administrative Judge