

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9326 / May 29, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3408 / May 29, 2012

INVESTMENT COMPANY ACT OF 1940
Release No. 30085 / May 29, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14893

In the Matter of

**QUANTEK ASSET MANAGEMENT, LLC,
BULLTICK CAPITAL MARKETS
HOLDINGS, LP, JAVIER GUERRA, and
RALPH PATINO,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTIONS
203(e), 203(f), AND 203(k) OF THE
INVESTMENT ADVISERS ACT OF
1940, AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF
1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS
AND CEASE-AND-DESIST ORDERS**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Quantek Asset Management, LLC (“Quantek”), Bulltick Capital Markets Holdings, LP (“Bulltick”), Javier Guerra (“Guerra”), and Ralph Patino (“Patino”) (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds¹ that:

Summary

This case involves a prominent Latin American-focused hedge fund adviser named Quantek that misled investors about three important attributes of funds that it managed: management “skin in the game,” the funds’ investment process, and certain related-party transactions. At its peak, Quantek managed over \$1 billion in assets, primarily through the Quantek Master Fund, SPC Ltd. and its two feeder funds, Quantek Opportunity Fund, L.P. and Quantek Opportunity Fund, Ltd. (collectively the “Opportunity Funds”).

First, from 2006 through 2008, Quantek made various representations to the effect that its principals had “skin in the game” along with investors in the Opportunity Funds. “Skin in the game,” in the managed fund context, means that the adviser or its principals invest their own money in the fund. Many fund investors consider this an important way to align the adviser’s interests with their own, resulting in stronger discipline and risk management. In fact, Quantek’s principals never invested their own capital in the Opportunity Funds. Quantek made these misstatements in due diligence questionnaires and in side letter agreements executed with certain institutional investors.

Second, from 2007 through 2008, Quantek misled investors about the rigor of the Opportunity Funds’ investment process. The funds used an asset-based lending strategy, with a focus on industrial and real estate ventures in Latin America. Because the funds’ loans were complex and illiquid, investors carefully evaluated Quantek’s process for making investments. Quantek told investors that all of the funds’ investments required approval by a committee of Quantek principals, and that the committee reviewed formal memoranda explaining each proposed investment before it was made. Quantek also told its largest investor that committee

¹ The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

members documented their approval by signing the memoranda. In reality, Quantek failed to prepare investment committee memos for numerous transactions. In 2007, the funds' largest investor requested copies of the investment committee memos. Quantek responded by creating, backdating, and signing the missing memos, giving this investor – and others later – the misimpression that Quantek had been following its purportedly robust process all along.

Third, from 2007 through 2010, Quantek provided investors with inaccurate information about certain related-party transactions by the funds. Because the Opportunity Funds permitted related-party transactions with Quantek's parent company, Bulltick, and other affiliates, investors were wary of transactions that were not properly disclosed. In 2006 and 2007, the funds made related-party loans to an affiliate of their portfolio manager, Javier Guerra, and to Bulltick entities that were not properly documented or secured. Subsequently, Quantek and Bulltick employees prepared and backdated the missing loan documents. Quantek employees also created investment memos designed to appear as if they were drafted before the funds made the loans. These materials inaccurately described key terms of the related-party loans and gave the impression that the loans had been sufficiently documented and secured at all times. Quantek provided these misleading documents, or their substance, to the funds' investors in various ways.

By its actions, Quantek violated certain antifraud, compliance, and recordkeeping provisions of the Advisers Act and Securities Act. Quantek's managing principal, Guerra, and its former operations director, Ralph Patino, were responsible for making various misrepresentations on Quantek's behalf. Bulltick was responsible for aiding and abetting and causing some of Quantek's violations.

Respondents

Quantek Asset Management, LLC is a Delaware limited liability company with its principal place of business in Miami, Florida. At all relevant times it was the investment adviser for the Opportunity Funds. Quantek was a wholly owned subsidiary of Bulltick from November 2006 until January 2009, and is now owned primarily by Javier Guerra. Quantek has been registered as an investment adviser since June 2007.

Bulltick Capital Markets Holdings, LP is a Delaware limited partnership and the successor to Bulltick Capital Markets, LP, a Scottish limited partnership founded by Javier Guerra and his associates. Bulltick Capital Markets, LP was the Bulltick entity in existence at the time of the events described herein. It was the parent company of Quantek and two Commission registered broker-dealers.

Javier Guerra, age 41, resides in Miami, Florida. At all relevant times, Guerra was the lead principal of Quantek and the portfolio manager for the Opportunity Funds. Guerra was a partner and managing director of Bulltick from 2000 until January 2009, when Bulltick and Quantek separated. From at least 2006 through January 2009, an entity controlled by Guerra owned approximately 30% of Bulltick.

Ralph Patino, age 46, resides in Miramar, Florida. At all relevant times, Patino was Quantek's director of operations. Patino was also Quantek's head of compliance from December 2006 through approximately spring 2007, when the firm began preparations to register.

Other Relevant Entity

The Opportunity Funds are hedge funds created in July 2005. The funds have a master-feeder structure comprised of Quantek Master Fund, SPC Ltd. (offshore) and two feeder funds, Quantek Opportunity Fund, L.P. (onshore) and Quantek Opportunity Fund, Ltd., (offshore). Quantek served as investment adviser to the funds from December 2006 until September 2011. Prior to December 2006, the funds' adviser was Quantek Financial (Cayman), Ltd. At its peak in July 2008, the Opportunity Funds had over \$1 billion in assets.

Facts

A. Background

Bulltick and Guerra formed Quantek in 2006 to serve as investment adviser to the Opportunity Funds. The Opportunity Funds' main investment strategy was asset-based lending to finance various Latin American industrial and real estate ventures. The Opportunity Funds grew quickly and, by mid-2008, had over \$1 billion in assets and about seventy investors, many of which were institutional.

Quantek and Bulltick failed to implement strong compliance practices at Quantek to keep pace with the funds' rapid growth. Quantek lacked a dedicated adviser compliance function until spring 2008, almost a year after registering as an investment adviser. Between June 2007, when Quantek registered, and spring 2008, Bulltick's chief compliance officer and Bulltick's broker-dealer subsidiary compliance personnel were given responsibility for Quantek's compliance, even though they had virtually no experience or training concerning registered investment advisers. They also lacked adequate time to perform all of their additional compliance responsibilities including a review of Quantek's due diligence questionnaires and other correspondence with investors.

B. Misstatements Concerning "Skin in the Game"

From December 2006 through at least June 2008, Quantek made representations to prospective investors that its principals had invested their own money in the Opportunity Funds. Quantek made these representations in due diligence questionnaire responses and side letter agreements with sought-after institutional investors.² In fact, none of Quantek's principals or affiliates had ever invested their own wealth in the Opportunity Funds.

These misrepresentations provided Quantek with a significant marketing benefit. "Skin in the game," also known as principal co-investment, refers to an adviser's investment

² Quantek did make accurate disclosures to other investors on the subject of principal co-investment.

in the fund or otherwise alongside fund investors and is widely viewed as an important way to align a manager's interests with its investors. Many fund investors consider principal co-investment to be an important check on the manager, resulting in stronger investment discipline and risk management practices. Prospective investors frequently inquire about principal co-investment during their due diligence process, and many require it in their fund selection.

Due Diligence Questionnaires

Quantek made misstatements concerning its principals' investment in the Opportunity Funds on due diligence questionnaires published by the Alternative Investment Management Association ("AIMA").

AIMA is an international non-profit trade association for the hedge fund industry. Among the many publications it provides to members is a form due diligence questionnaire titled, "Illustrative Questionnaire for Due Diligence Review of Hedge Fund Managers" ("AIMA DDQ"). This questionnaire is commonly used throughout the industry. It is designed to be completed by hedge fund managers and distributed to prospective investors. The first page of the AIMA DDQ states that the form's purpose is to "serve as a guide to investors in their relations with hedge fund managers."

From December 2006 through June 2009, Quantek completed several AIMA DDQs and provided them to prospective investors in the Opportunity Funds.

The AIMA DDQs used by Quantek included a section titled "Management Team's Co-Investment" that contained the following questions:

What is the total amount invested by the principals/management in the fund and other investment vehicles managed *pari passu* with the fund?

Has the management reduced its personal investment?

- Date:
- Amount:
- Reasons:

Quantek's operations director and then head of compliance, Patino, was responsible for preparing Quantek's AIMA DDQ to be issued in December 2006. Patino answered the first question for Quantek by writing "\$13 million." He wrote "no" in response to the second question concerning management reduction of personal investment. In fact, Quantek principals and management had never invested in the Opportunity Funds or in any vehicle managed *pari passu* with the Opportunity Funds.³ Accordingly, Patino and Quantek's "\$13 million" answer was incorrect. The correct response was "zero."

³ The term *pari passu* is commonly used in the hedge fund industry. Its literal meaning is "of equal step." Quantek investors generally understood *pari passu*, in this context, to capture other investment vehicles

At the time he answered the AIMA DDQ Management Team Co-Investment questions, Patino did not know the meaning of the term *pari passu* and spent very little time researching its definition. Under an erroneous belief, Patino improperly counted certain unrelated investments as if they were investments made *pari passu* with the Opportunity Funds. Patino sent the completed draft AIMA DDQ answers to others at Quantek, including Guerra, for review and comment. Later, Guerra sent Quantek's AIMA DDQ responses to a prospective investor. That prospective investor subsequently invested approximately \$2 million in the Opportunity Funds.

Following the template set by Patino, Quantek and its third-party marketers provided prospective investors with the incorrect AIMA DDQ responses from December 2006 through June 2008. During that time, Patino and others at Quantek reduced the amount of Quantek's purported principal/management investment that was reported on AIMA DDQs from \$13 million to \$10 million in June 2007, and then to \$7 million in December 2007. The correct answer, however, was always "zero." Furthermore, even though Quantek reduced the amount of its purported principal co-investment, it consistently answered "No" to the question asking if Quantek management had reduced their personal investment.

The Opportunity Funds' investors who received AIMA DDQs continued to believe that Quantek's principals had a co-investment in the funds.

After Quantek registered as an investment adviser in June 2007, nearly a year passed before anyone reviewed the firm's AIMA DDQ responses for accuracy. During that period, Quantek did not have its own compliance staff. Bulltick and Guerra undertook to provide compliance resources to Quantek so it could meet its regulatory compliance obligations. Therefore, from June 2007 through spring 2008, Quantek and Bulltick shared compliance department employees, including a chief compliance officer. However, these shared employees had virtually no registered investment adviser compliance experience and were not properly trained in investment adviser regulatory issues. The employees also lacked sufficient time to review the AIMA DDQs because they were responsible for all compliance work at two Bulltick owned broker-dealers and Quantek, which by December 2007 was managing two separate hedge funds and almost \$1 billion in assets.

Eventually, in May 2008, Quantek hired a senior compliance manager with investment adviser compliance experience. He reviewed its AIMA DDQ responses and concluded that they should be changed. Accordingly, in an updated AIMA DDQ response dated June 2008, Quantek changed its principal/management investment answer to "N/A." In June 2009, Quantek changed this response again to "Zero." Quantek similarly changed its answer to the second part, concerning management reduction of personal investment, from "No" to "N/A."

Quantek also provided a prospective investor with misleading information about principal co-investment in the Opportunity Funds on another type of due diligence

utilizing the same strategy and style as the Opportunity Funds so that their value rose or fell in unison with the Opportunity Funds.

questionnaire. In December 2006, a prospective Opportunity Funds investor asked Quantek to complete a separate due diligence questionnaire titled, “Operational Due Diligence Questionnaire for Prospective Managers” (“Operational DDQ”). The Operational DDQ stated in capital letters on its first page:

THIS QUESTIONNAIRE IS AN INTEGRAL PART OF OUR DUE DILIGENCE PROCESS, NO INVESTMENT DECISIONS CAN OR WILL BE TAKEN, WITHOUT THE SUPPORT OF THIS COMPLETED DOCUMENT.

It contained the question: “Do the partners and employees have investments in the fund? Please provide as much information as possible.” In response, Quantek stated that “[t]he Directors of the Manager have position of (*sic*) the fund, which represents a significant portion of their wealth.” Quantek answered another query, which sought a description of the Opportunity Funds’ investor base, by indicating that investments from Quantek principals accounted for 17% of the funds’ assets. Quantek personnel prepared these inaccurate responses based on the firm’s incorrect AIMA DDQ answers. In fact, none of Quantek’s principals had invested in the Opportunity Funds. Less than two months after it received Quantek’s misleading AIMA DDQ and Operational DDQ answers in December 2006, the prospective investor made a \$2.5 million investment in the Opportunity Funds.

Side Letter Agreements with Institutional Investors

In early 2007, two large institutional investors were considering investments in the Opportunity Funds. During the course of due diligence, one investor received Quantek’s inaccurate AIMA DDQs concerning principal/management co-investment. The other investor received the same inaccurate information during a site visit to Quantek’s offices. As a result, both investors operated with the understanding that Quantek’s principals maintained a co-investment in the Opportunity Funds. Before investing, both investors separately sought assurances that they would be notified promptly if Quantek’s principals significantly reduced their investments in the Opportunity Funds.

To memorialize their requirements, both investors sought and obtained side letter agreements from Quantek. The side letter with the first investor stated:

[Quantek] . . . agrees to (i) provide 2 business days written notice . . . and (ii) waive the standard notice period and accelerate the redemption date . . . if . . . Javier Guerra withdraws 20% or more of his investment in the Fund

The side letter with the second investor contained similar provisions in the event that “Quantek principals” redeemed 25% percent or more of their investment in the Opportunity Funds. Guerra executed both side letter agreements on behalf of Quantek and the Opportunity Funds.

These side letter agreements implied that Quantek's principals, including Guerra, had investments in the Opportunity Funds when in fact they did not. After receiving these side letters, the two investors allocated nearly \$100 million in combined capital to the Opportunity Funds.

C. Misrepresentations Concerning Investment Process

Quantek's investment process for the Opportunity Funds was particularly important to investors. Unlike funds that traded liquid securities on a public exchange, the Opportunity Funds made unique private investments that were illiquid. The funds' loans typically were secured by tangible assets or cash flows, and were subject to foreign law. In addition, Quantek was a relatively new adviser without an established performance record. For these reasons, many investors carefully evaluated Quantek's process for making investments on behalf of the Opportunity Funds.

Quantek's Stated Investment Process

Quantek's primary seed investor in the fall of 2006 was a large institutional hedge fund ("Seed Investor"). The Seed Investor made a number of requests that it wanted Quantek to satisfy before it would invest in the Opportunity Funds. One such request was that Quantek adopt a robust investment approval process. At the Seed Investor's request, Quantek formalized its investment process so that a committee would make investment decisions for the funds. This investment committee was comprised of five members: Guerra (chairman), two other Bulltick partners, Patino, and another senior Quantek employee.

According to the funds' offering documents, Quantek was to rely on the investment committee when making investment decisions for the funds, and all investments required approval from at least four committee members. Guerra assured the Seed Investor that all Opportunity Funds investments would be approved in advance by the investment committee, and that the committee would memorialize its decisions. Once Quantek committed to implementing this process, the Seed Investor allocated tens of millions of dollars to the Opportunity Funds.

Quantek made additional representations to prospective investors about its investment approval process. Beginning in December 2006, Quantek stated in AIMA DDQ responses and elsewhere that, as part of the approval process, a formal investment memorandum was prepared and presented to the investment committee for final consideration before each investment was made. These memoranda were to describe the proposed transactions and ask the investment committee to approve them. Patino also told the Seed Investor in June 2007 that when the investment committee approved a transaction, its members who voted for approval executed the investment memo for that transaction. Patino further indicated that there was no need for Quantek to prepare minutes of investment committee meetings because executed investment memos performed the same function. The investment memos, among other purposes, served to memorialize the decisions of the investment committee as part of the process Quantek promised the Seed Investor it would follow.

Failure to Follow Stated Investment Process

The Opportunity Funds grew very quickly. In mid-2006, the funds had about \$10 million in assets and three investors. By June 2007, the funds had approximately \$635 million in assets and almost 60 investors. The Opportunity Funds' rapid growth, however, coincided with a period of great disorganization at Quantek. Quantek had no standard procedure for maintaining the Opportunity Funds' investment documents and did not keep them in a centralized location. Many times Quantek employees could not readily locate investment documentation for reference.

Quantek's growth and disarray had an impact on the Opportunity Funds' investment approval process. During the first six months of 2007, Quantek repeatedly failed to follow the process that it had described to investors and prospective investors. Specifically, Quantek made at least fifteen investments for the Opportunity Funds without first preparing and submitting a memorandum to the investment committee. These investments accounted for about \$350 million, or more than half, of the Opportunity Funds' total portfolio value by June 2007.

The Seed Investor had a practice of conducting periodic due diligence reviews of the Opportunity Funds' portfolio. During one of these reviews in June 2007, a director of the Seed Investor asked Patino, Guerra, and others at Quantek for copies of the investment memoranda. None of the Quantek employees responded candidly that many of the investment memos did not exist. Instead, Quantek held off the Seed Investor to allow time for employees to prepare the missing investment memos. The newly-created memos described past Opportunity Funds investments in the future tense and purported to seek committee approval for deals that had already occurred. The memos also gave the impression that the committee's review and approval process was far more rigorous than it actually was. Guerra knew that Quantek employees were preparing after-the-fact investment memos for the Seed Investor in this way. Nevertheless, Guerra signed the memos along with other committee members so that Quantek could provide the Seed Investor with fully executed copies. Quantek provided these memos to the Seed Investor in June 2007. As a result, for the fifteen transactions in question, Quantek gave the Seed Investor the erroneous impression that the memos were authentic in describing the investment process and committee action.

Quantek generally prepared timely investment memoranda for investments made after June 2007. However, through the fall of 2007, Quantek personnel continued drafting after-the-fact memoranda for investments made prior to June 30, 2007. In addition, Quantek personnel provided the misleading memos to other investors and prospective investors conducting due diligence reviews of Opportunity Funds investments. The memos suggested that Quantek was following a robust, documented investment process, when in fact Quantek had frequently deviated from that process.

D. Misrepresentations Concerning Related-Party Transactions

The Opportunity Funds' asset-based lending strategy presented potential conflicts of interest between the funds and Quantek's affiliates, including its Bulltack parent company. Bulltack sometimes originated potential investments for the Opportunity Funds. Recognizing

this, the funds' offering documents permitted them to make transactions with Bulltick and other Quantek affiliates, including companies owned by Guerra. However, the Opportunity Funds' investors were wary of related-party transactions between the funds and Quantek's affiliates.

In 2006 and 2007, the Opportunity Funds made related-party loans to Bulltick entities and a separate Guerra-controlled company that were not properly documented or secured by collateral under the loan terms. Subsequently, Quantek and Guerra provided investors with misleading information about the timing and terms of these loans. Bulltick assisted Quantek and Guerra by creating written agreements for the loans that did not reflect the actual transactions and by permitting its subsidiaries to execute those agreements.

The "Equus" Loan

In August 2006, Guerra exercised his authority as portfolio manager to direct the Opportunity Funds to make an \$800,000 loan to a company he controlled for a real estate investment in New York City. The loan was reflected in the Opportunity Funds' records and repaid in full with interest by Guerra's affiliate company in 2008. However, Quantek and Guerra did not properly document the loan at the time it was made.

Before executing a loan agreement, Guerra wanted to ensure that the loan did not have negative tax implications for the Opportunity Funds. In early 2007, after these tax issues were resolved, Guerra signed a loan agreement on behalf of the Opportunity Funds. The underlying real estate investment was made by the Guerra-controlled company and had nothing to do with Bulltick or its subsidiaries. However, the loan agreement that Guerra executed inaccurately stated that the Opportunity Funds had made the loan to an entity called Equus Capital Partners, LP ("Equus"), which was a Bulltick subsidiary. The loan agreement also stated – incorrectly – that the loan was secured by "commissions" that Equus anticipated receiving, when in fact Equus's business did not actually involve the receipt of commissions. The agreement bore the date on which the loan was made in August 2006, rather than the date when the loan agreement was prepared and executed in 2007.

Guerra arranged for other Bulltick partners to execute the loan agreement and a similarly inaccurate loan note on behalf of Equus. As a result, Bulltick permitted its Equus subsidiary to enter into a related-party loan agreement with the Opportunity Funds that did not reflect the actual transaction. Instead of the loan documentation properly reflecting the funds' \$800,000 unsecured loan to Guerra's affiliate, the documents showed that the funds had made a nondescript secured loan to a Bulltick subsidiary called Equus.

Quantek and Guerra provided investors with untrue information about the loan. From June 2007 through July 2008, Quantek sent investors portfolio reports that referenced an "Equus" investment, even though the loan had nothing to do with Equus. For much of that time period, the same portfolio reports stated that the "Equus" investment was in Latin America when, in fact, Guerra's affiliate company received the loan and used it to purchase a building in New York City. In November and December 2007, Guerra personally provided some of the funds' investors with portfolio statements repeating the inaccurate borrower and collateral information in the backdated Equus loan documents. In January 2010, Quantek further

provided the inaccurate loan documents to a forensic accounting firm retained by a committee of large investors in the Opportunity Funds to evaluate the funds' related-party loans. Inaccurate information about the Opportunity Funds' loan to Guerra was also reflected on Quantek's internal records including its general ledger and trial balance for the Opportunity Funds.

The ERV Loan

Quantek and Guerra misled investors about another related-party transaction, a loan from the Opportunity Funds to an inactive Bulltick subsidiary called ERV Investments, LLC ("ERV"). Bulltick provided assistance by creating written agreements for the loan that did not reflect the actual transactions and permitting its subsidiaries to execute those agreements.

In March 2007, the Opportunity Funds made a \$10 million related-party loan to ERV. The purpose of the loan was to enable Bulltick, through the ERV special purpose vehicle, to provide initial capital to a new hedge fund that Quantek was forming. The loan documentation was executed by Guerra (on behalf of the funds) and other Bulltick partners (on behalf of ERV). To secure repayment of the Opportunity Funds' \$10 million loan, Bulltick pledged its ownership shares of ERV as collateral. However, ERV had no assets, no cash flows, and no other value apart from the loan proceeds it had just received.

After receiving the loan, Bulltick caused ERV to make a \$7 million investment in the new hedge fund. The rest of the \$3 million in loan proceeds were transferred to Bulltick and used for working capital. At this point, the Opportunity Funds' original \$10 million loan was under-secured by the ERV shares because ERV's only asset was the \$7 million subscription in the new fund.

In June 2007, Bulltick caused ERV to assign the Opportunity Funds' loan to Bulltick itself, along with the \$7 million subscription in the new hedge fund. Bulltick was now the borrower while ERV was once again an empty vehicle. However, in the loan assignment process, Bulltick failed to modify the original security agreement to ensure that valuable collateral would secure the funds' loan. Instead, the only collateral securing the loan was Bulltick's ownership stake in ERV, which was worthless. As a result, the Opportunity Funds' original loan to ERV was effectively unsecured. Bulltick ultimately repaid the loan in full with interest in 2009.

Guerra and Quantek provided the Opportunity Funds' investors with erroneous information about the ERV loan collateral. In June 2007, Guerra and the other investment committee members signed a backdated investment memo incorrectly stating that the loan was to be secured by Bulltick shares, when in fact it was secured by ERV shares. The difference was material, because ERV had no value at that time. The memo also stated that Bulltick would hold \$3 million of the loan proceeds as a "cash collateral agent," when in fact Bulltick had already used the \$3 million for its working capital. Quantek personnel provided this memo to various investors in the funds. Moreover, in November and December 2007, Guerra sent investors portfolio reports stating incorrectly that the loan collateral was shares of ERV worth

\$7.5 million, the value of the new hedge fund investment. In fact, the ERV shares had no value because the fund investment had been assigned to Bulltck.

Finally, in June 2008, Guerra and other Bulltck partners signed backdated assignment and pledge agreements for the Opportunity Funds' loan to ERV. In spring 2008, Bulltck personnel discovered that the documents assigning the loan from ERV to Bulltck had not been finalized. Bulltck attempted to remedy the problem by preparing backdated assignment and pledge agreements. Those documents incorrectly indicated that the ERV loan had been assigned to Bulltck and secured by Bulltck shares as early as June 2007. In this manner, Guerra, Quantek, and Bulltck made it appear as if the Opportunity Funds' loan to ERV was properly documented and secured with valuable collateral at all times. In September 2008, Quantek provided these loan documents to a prospective investor that was conducting due diligence on the funds' related-party transactions. In January 2010, Quantek also provided these documents to a forensic accounting firm that had been retained by a group of the Opportunity Funds' investors specifically to evaluate the funds' related-party loans.

Violations

Sections 17(a)(2) and 17(a)(3) of the Securities Act

Section 17(a)(2) of the Securities Act specifically prohibits obtaining money or property by means of any untrue statements of material fact or material omissions in the offer or sale of securities. Section 17(a)(3) prohibits engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon the purchaser in the offer or sale of securities. Establishing violations of Sections 17(a)(2) and 17(a)(3) does not require a showing of scienter; negligence is sufficient. *Aaron v. SEC*, 446 U.S. 680, 697 (1980); *SEC v. Hughes Capital Corp.*, 124 F.3d 449, 453-54 (3d Cir. 1997).

As a result of the conduct described above, Quantek and Guerra willfully⁴ violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, and Patino willfully violated Section 17(a)(3) of the Securities Act.

Section 206(4) of the Advisers Act and Rule 206(4)-8 Thereunder

Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder prohibit investment advisers from engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative, and from making any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading to investors or prospective investors in a pooled investment vehicle. Scienter is not required to establish a violation of Section 206(4) and Rule 206(4)-8.

⁴ A willful violation of the securities laws means merely ““that the person charged with the duty knows what he is doing.”” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

As a result of the conduct described above, Quantek and Guerra willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, and Patino willfully aided and abetted and caused Quantek's violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

As a result of the conduct described above, Bulltick willfully aided and abetted and caused Quantek's violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

Section 206(4) of the Advisers Act and Rule 206(4)-7 Thereunder

Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require registered investment advisers to adopt and implement written procedures reasonably designed to prevent violations of the Advisers Act.

Quantek willfully violated Rule 206(4)-7 by failing to implement policies and procedures reasonably designed to prevent the firm from making material misrepresentations to investors. Quantek's compliance policies required all of its correspondence with investors and prospective investors to be reviewed for compliance with applicable laws and approved in advance by its chief compliance officer. Quantek's compliance staff lacked sufficient time to review those marketing materials because of their other compliance responsibilities at Quantek affiliates. In addition, prior to spring 2008, Quantek's compliance employees, including its chief compliance officer, had virtually no investment adviser compliance experience or training. As a result, Quantek's correspondence with investors and prospective investors was not adequately reviewed and approved as required by its own compliance policies.

Both Bulltick and Guerra willfully aided and abetted and caused Quantek's violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. Guerra was the founder and managing principal of Quantek as well as portfolio manager of the Opportunity Funds. Bulltick established Quantek to serve as its hedge fund advisory subsidiary. Guerra and Bulltick knew about Quantek's regulatory compliance obligations and undertook to provide compliance staff for the firm. However, they assigned compliance staff to Quantek that did not have the necessary training, experience, and time to perform the required advisory compliance functions.

Section 204 of the Advisers Act and Rule 204-2(a)(7)

Section 204 of the Advisers Act requires that every investment adviser registered or required to be registered maintain certain books and records. Rule 204-2(a)(7) requires that registered investment advisers "make and keep true, accurate and current . . . originals of all written communications received and copies of all written communications sent by such investment adviser[s] relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given, [and] (ii) any receipt, disbursement or delivery of funds or securities"

Quantek willfully violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder by failing to keep true, accurate, and current originals of written communications

with investors and others concerning certain of the Opportunity Funds' related-party loans, whose underlying source documentation was inaccurate.

As a result of the conduct described above, Bulltick and Guerra willfully aided and abetted and caused Quantek's violations of Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 203(e), 203(f), and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent **Quantek** cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Sections 206(4) and 204 of the Advisers Act and Rules 206(4)-8, 206(4)-7, and 204-2(a)(7) thereunder.

B. Respondent **Guerra** cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Sections 206(4) and 204 of the Advisers Act and Rules 206(4)-8, 206(4)-7, and 204-2(a)(7) thereunder.

C. Respondent **Bulltick** cease and desist from committing or causing any violations and any future violations of Sections 206(4) and 204 of the Advisers Act and Rules 206(4)-8, 206(4)-7, and 204-2(a)(7) thereunder.

D. Respondent **Patino** cease and desist from committing or causing any violations and any future violations of Section 17(a)(3) of the Securities Act and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

E. Respondents **Quantek** and **Bulltick** are censured.

F. Respondent **Guerra** be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission; and

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser,

depositor, or principal underwriter with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

G. Any reapplication for association by **Guerra** will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Guerra, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award against Guerra related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award against Guerra to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order against Guerra by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

H. Respondent **Patino** be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization with the right to apply for reentry after one (1) year to the appropriate self-regulatory organization, or if there is none, to the Commission; and

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter with the right to apply for reentry after one (1) year to the appropriate self-regulatory organization, or if there is none, to the Commission.

I. Any reapplication for association by **Patino** will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Patino, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award against Patino related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award against Patino to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order against Patino by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

J. Respondents **Quantek** and **Guerra**, shall, jointly and severally, pay disgorgement of \$2,056,446 and prejudgment interest of \$219,585 to the Securities and Exchange Commission. Payment shall be made in the following installments: \$1,138,016 within ten (10) days of the entry of this Order and \$1,138,015 on or before October 1, 2012. If

any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement and prejudgment interest, plus any additional interest accrued pursuant to SEC Rule of Practice 600, shall be due and payable immediately, without further application. Payments shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Quantek and Guerra as Respondents in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Scott Weisman, Assistant Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

K. Respondent **Quantek** shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$375,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Quantek as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Scott Weisman, Assistant Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

L. Respondent **Bulltick** shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$300,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Bulltick as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Scott Weisman, Assistant Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

M. Respondent **Guerra** shall pay a civil money penalty in the amount of \$150,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: \$75,000 shall be paid within thirty (30) days of the date of this Order and another \$75,000 shall be paid within 365 days of the date of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made

payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Guerra as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Scott Weisman, Assistant Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

N. Respondent **Patino** shall pay a civil money penalty in the amount of \$50,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: \$25,000 shall be paid within thirty (30) days of the date of this Order and another \$25,000 shall be paid within 365 days of the date of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payments shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies Patino as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Scott Weisman, Assistant Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

O. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, interest, and penalties ordered herein. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of civil penalties in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor

Action” means a private damages action brought against one or more of the Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Elizabeth M. Murphy
Secretary