UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6597 / April 29, 2024

INVESTMENT COMPANY ACT OF 1940
Release No. 35182 / April 29, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21923

In the Matter of **CATALYST CAPITAL ADVISORS LLC,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AND SECTIONS 9(b) AND 9(f) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

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 Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Catalyst Capital Advisors LLC ("CCA" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") 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 Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of

1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

1. These proceedings concern an impermissible joint legal fee arrangement between CCA, a registered investment adviser, and its client, Mutual Fund Series Trust (the "Trust"), an SEC-registered open-end investment company. CCA advised the Catalyst Hedged Futures Strategy Fund ("Hedged Futures Fund"), a series of the Trust that experienced significant losses between December 2016 and February 2017. Shortly thereafter, the Commission and another regulator opened inquiries regarding the Hedged Futures Fund (the "Regulatory Inquiries"). Beginning in February 2017 and continuing through October 2020, CCA and the Trust incurred $2.7 million in legal costs associated with the Regulatory Inquiries and two related private lawsuits (the "Private Lawsuits"), which involved overlapping facts and legal issues. CCA and the Trust both retained the same legal counsel ("Counsel") to represent them in the Regulatory Inquiries and the Private Lawsuits. Without the approval or knowledge of the Trust's independent trustees, CCA arranged for the Trust to pay, at least initially, all of the legal fees and related costs resulting from the Regulatory Inquiries and the Private Lawsuits, including the expenses associated with CCA's legal representation. CCA accrued as liabilities certain of the legal expenses and later reimbursed the Trust for a portion of CCA's expenses. Then, after the staff opened its investigation in this matter, the Trust requested that Counsel allocate expenses, and the independent trustees thereafter approved the recommended allocation and directed CCA to reimburse the Trust in accordance with that allocation for most of its remaining unreimbursed expenses, with interest. CCA benefited from this arrangement by deferring payment on its legal costs for multiple years, and by ultimately agreeing to an allocation with the Trust that was more advantageous to CCA than the final allocation determined by the Trust's insurance carrier, which, subject to certain limitations, covered legal costs the carrier determined were allocable to and incurred by the Trust in connection with the Regulatory Inquiries and Private Lawsuits. As a result of this arrangement, CCA violated Section 17(d) and Rule 17d-1 thereunder of the Investment Company Act and Section 206(2) of the Advisers Act.

Respondent

2. **Catalyst Capital Advisors LLC**, a New York limited liability company with its principal place of business in San Juan, Puerto Rico, has been registered with the Commission as an investment adviser since June 2006. Before February 2020, CCA was headquartered in Huntington, New York. In its Form ADV dated March 29, 2023, CCA reported that it had approximately $7.1 billion in regulatory assets under management.

Other Relevant Entity

3. **Mutual Fund Series Trust** is registered with the Commission as an open-end management investment company and currently consists of 86 series. CCA serves as investment adviser to 18 series of the Trust.

Facts

4. Between December 2016 and February 2017, the Hedged Futures Fund experienced significant losses from its options-trading investment strategy. Beginning in February 2017, CCA and the Trust began receiving Regulatory Inquiries related to these losses. In April 2017, a class action alleging that the Hedged Futures Fund misrepresented, among other things, its investment objective and risk management procedures, was filed in the Eastern District of New York against the Trust, CCA, and others (*Emerson v. Mutual Fund Series Trust et al.*, Case No. 2:17-cv-02565-ADS-GRB (E.D.N.Y.) (filed Apr. 28, 2017)). A similar shareholder derivative action was filed in Ohio state court in August 2017 (*Chum v. Szilagyi et al.*, Case No. 17-CV-006933 (Ct. of Common Pleas, Franklin Cnty. Ohio, Civil Div.) (filed Aug. 2, 2017)). In February 2017, CCA and the Trust retained Counsel to represent them in the Regulatory Inquiries, and shortly thereafter retained Counsel to represent them in the Private Lawsuits. The engagement letter between the Trust and Counsel acknowledged that conflicts of interest might develop between CCA and the Trust but did not address how legal fees and other expenses would be allocated between CCA and the Trust, including in circumstances when legal services were being rendered simultaneously to both entities. The invoices did not delineate the fees and expenses of each of CCA and the Trust, respectively.

5. The Trust had an insurance policy that, subject to a deductible and a ceiling, would cover legal costs the Trust incurred in connection with the Regulatory Inquiries and Private Lawsuits. CCA did not have an insurance policy to cover its legal costs. Because the Private Lawsuits and Regulatory Inquiries involved overlapping facts and legal issues affecting both CCA and the Trust, and in order to maximize the amount of legal fees covered by the Trust's insurer, CCA arranged to have all of the legal bills associated with the Regulatory Inquiries and Private Lawsuits paid by the Trust and subsequently submitted to the Trust's insurer. According to CCA, it intended to later reimburse the Trust for amounts the insurer determined were not properly allocable to the Trust and would not be covered. Consistent with this CCA had paid the Trust's portion of a private settlement and had accounted for additional legal costs before the Commission's investigation began. CCA and the Trust entered into this bill-paying arrangement without the knowledge or approval of the independent trustees of the Trust's Board of Trustees ("Board") and without making an application to the Commission regarding a joint arrangement between the adviser and the Trust pursuant to Rule 17d-1 under the Investment Company Act.

6. Counsel's first invoice related to the Regulatory Inquiries was dated May 23, 2017, and covered legal services dating back to February 17, 2017, before the Trust had formally executed Counsel's engagement letter. The Trust paid that invoice, as well as over 100 invoices that followed. Between May 2017 and March 2020, the Trust paid approximately $2.5 million in legal

fees and costs associated with Counsel's representation of the Trust and CCA in the Regulatory Inquiries and Private Lawsuits, while CCA did not pay anything during this period.

7. On January 27, 2020, the Commission instituted a settled administrative proceeding against CCA and one of its officers (*In the Matter of Catalyst Capital Advisors et al.*, File No. 3-19674 (Jan. 27, 2020)). On the same day, the Commission also filed a litigated action in the Western District of Wisconsin against the Hedged Futures Fund's portfolio manager (*SEC v. Walczak*, Case No. 3:20-cv-00076 (W.D. Wisc.) (filed Jan. 27, 2020)), whom CCA terminated upon the filing of this action.

8. On April 20, 2020, CCA paid $781,250 of the Trust's share of a legal settlement in the class action litigation in addition to its own share of that settlement, as a step toward beginning to repay the legal fees paid by the Trust. Counsel and other entities continued to provide and bill for legal services in connection with the Regulatory Inquiries and Private Lawsuits throughout 2020. The Trust paid approximately 80% of these new legal fees, while CCA paid the remaining 20%.

9. In March 2021, after the Commission staff contacted CCA concerning the Trust's payment of legal fees, the Trust, in consultation with Counsel and independent trustees' counsel, allocated between 30% and 100% of the legal expenses, depending on the timeframe, incurred between 2017 and 2020, to CCA. The resulting calculation allocated $1,277,388 of the legal fees to CCA and $1,403,681 to the Trust. CCA paid $472,403 to the Trust to cover its remaining balance (after accounting for the $781,250 CCA already paid on the Trust's behalf in connection with the April 2020 settlement), and then in October 2021, at the Board's request, CCA paid an additional $30,726 to the Trust reflecting interest on the amounts the Trust had paid on behalf of CCA.

10. Throughout 2022 and 2023, the Trust continued to work with its insurer to determine the amount that the insurer would consider the Trust's legal expenses subject to insurance coverage associated with the Regulatory Inquiries and Private Lawsuits.[1] In 2023, the insurer, based on its own allocation analysis, ultimately covered $183,757 less than the amount CCA and the Trust had agreed would be allocated to the Trust, leaving the Trust responsible for $183,757 in legal fees that were not reimbursed by its insurer. In December 2023, in connection with a proposed resolution of this matter, CCA voluntarily repaid the Trust $183,757 for those legal expenses.

Violations

11. As a result of the conduct described above, CCA willfully[2] violated Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder, which generally prohibit any affiliated

[1] The *Emerson* class action was dismissed by a federal court in June 2019 and thereafter settled while an appeal was pending. The *Chum* case was settled in February 2023.

[2] "Willfully," for purposes of imposing relief under Section 203(e) of the Advisers Act and Section 9(b) of the Investment Company Act, "'means no more than 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)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir.

person of a registered investment company, acting as principal, from participating in or effecting any transaction in any joint enterprise or other joint arrangement or profit-sharing plan in which such registered investment company is a participant, absent an order issued by the Commission.

12. As a result of the conduct described above, CCA willfully violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client." Scienter is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194-95 (1963)).

Disgorgement

13. The disgorgement and prejudgment interest ordered in paragraph IV.C is consistent with equitable principles and does not exceed Respondent's net profits from its violations and will be distributed to harmed clients to the extent feasible. The Commission will hold funds paid pursuant to paragraph IV.C in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to clients, and any amounts returned to the Commission in the future that are infeasible to return to clients, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent CCA's Offer.

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

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder and Section 206(2) of the Advisers Act.

B. Respondent is censured.

1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

C. Respondent is liable for disgorgement of $280,902, representing the unreimbursed legal expenses allocated to CCA as well as the time value of money benefit CCA received, of which $183,757 is offset by its December 2023 payment to the Trust. Respondent shall, within fourteen (14) days of the entry of this Order, pay the remaining disgorgement of $97,145, prejudgment interest of $30,081, and a civil penalty of $200,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying CCA as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Jeffrey A. Shank, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 1450, Chicago, IL 60604.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, prejudgment interest, and penalties referenced in paragraph IV.C above. 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, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it 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 Securities and Exchange Commission. 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 Respondent 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.

Vanessa A. Countryman
Secretary