

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5436 / January 27, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19674

In the Matter of

**CATALYST CAPITAL
ADVISORS, LLC**

AND

JERRY SZILAGYI,

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 203(e), 203(f),
AND 203(k) OF THE INVESTMENT
ADVISERS 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), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Catalyst Capital Advisors, LLC (“CCA”) and Jerry Szilagyi (“Szilagyi”) (collectively, the “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V., Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers 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 Respondents' Offer, the Commission finds¹ that

Summary

1. These proceedings arise out of material misstatements and omissions made by CCA in connection with the Catalyst Hedged Futures Strategy Fund (the "Fund"), a mutual fund that CCA advises and that invests primarily in options on S&P 500 index futures contracts.

2. CCA made misrepresentations to investors in the Fund concerning its risk management procedures and the existence of stop loss measures and triggers to cap or otherwise limit losses which were inconsistent with CCA's actual practices. CCA and the Fund's lead portfolio manager (the "Senior Portfolio Manager") also failed to manage the Fund's risks consistent with the Fund's prospectus, which stated that CCA would "employ[] strict risk management procedures."

3. Szilagyi – the President, Chief Executive Officer, Co-Founder, and majority owner of CCA – was a cause of CCA's violations and also failed reasonably to supervise the Senior Portfolio Manager in connection with the Fund's risk management.

4. The Fund lost approximately 20% of its net asset value – more than \$700 million – during the period December 2016 through February 2017.

Respondents

5. **Catalyst Capital Advisors, LLC** (SEC File No. 801-66886) has been registered with the Commission as an investment adviser since 2006, and is headquartered in Huntington, New York. CCA reports having more than \$5.7 billion in regulatory assets under management in its Form ADV dated May 31, 2019. CCA has been the investment adviser to the Fund since its conversion from a private fund to a mutual fund in 2013.

6. **Jerry John Szilagyi**, age 57, is the President, Chief Executive Officer, Co-Founder, and majority owner of CCA. He also is responsible for the oversight and strategic direction of CCA. Szilagyi has spent his entire career, beginning in 1983, in the financial services industry, and currently holds Series 6, 7, 26, and 63 licenses.

Other Relevant Entities

7. **Mutual Fund Series Trust (the "Trust")** is registered with the Commission as an open-end management investment company, is organized as an Ohio business trust, and currently

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

consists of forty (40) series, one of which is the Fund. CCA serves as investment adviser to the majority of the series of the Trust.

8. **Catalyst Hedged Futures Strategy Fund** is a series of the Trust and an open-end fund advised by CCA. The Fund invests primarily in long and short call and put options on U.S. Stock Index Futures contracts, and is jointly regulated by the Commission and the Commodity Futures Trading Commission.

Background

A. Material Misstatements to Investors About CCA's Risk Management Procedures

9. CCA launched the Fund as an SEC-registered mutual fund in September 2013 after converting it from a private fund that the Senior Portfolio Manager established in December 2005. The Fund invests primarily in options on S&P 500 index futures contracts and is sold to investors through unaffiliated investment advisers and broker-dealers.

10. A central selling point for the Fund was CCA's risk management procedures. In promoting such procedures, CCA and the Senior Portfolio Manager made material misstatements in investor-facing marketing documents and in telephone calls with investment advisers that it utilized stop loss measures and triggers to exit positions that would limit the Fund's losses. Examples of such statements include:

- a. "Risk Management – Every position is initiated on a hedged basis with portfolio level stop loss trigger points to limit drawdowns."
- b. "If a drawdown reaches 8% of overall portfolio risk, there is a trigger to exit position(s)."
- c. "[The Fund utilizes a] Risk Management Strategy explicitly focused on limiting losses by hedging individual positions at initiation, ongoing adjustment based on well-defined risk parameters, and aggregate portfolio stop loss measures."
- d. "We do have a hard stop at 8% where we flatten the portfolio."

However, the Senior Portfolio Manager managed the Fund differently from what was represented to investors and their advisers. These statements were false because, in fact, CCA had no "stop loss" measures that operated to cap or otherwise limit losses to a given threshold nor was any particular action mandated at a given loss threshold.

11. CCA also represented to investors in written materials that it managed the Fund's portfolio risk levels by employing "strict risk management procedures to adjust portfolio exposure as necessitated by changing market conditions" and that "[a] strict list of risk parameters are abided by." These statements were materially misleading because, in practice, the Senior Portfolio Manager often declined to "abide by" or follow those purportedly "strict" procedures. For example, CCA's written risk management procedures required it to monitor the Fund's portfolio

for compliance with certain parameters, and to take certain required “corrective action” if those parameters were breached. The Fund breached certain of those written risk parameters during the majority of the trading days between December 2016 and February 2017, yet CCA failed to take corrective action required by its written risk management procedures and, thus, failed to manage the Fund’s portfolio risk levels as represented.

12. The Fund had more than \$4 billion in assets in early December 2016. From that point through mid-February 2017, CCA did not manage the Fund’s portfolio risk levels as represented. Subsequently, the Fund lost approximately 20% of its net asset value constituting more than \$700 million.

B. Szilagyi’s Failure to Supervise the Senior Portfolio Manager

13. At all relevant times, Szilagyi supervised the Senior Portfolio Manager. For instance, Szilagyi, the majority owner of CCA, engaged the Senior Portfolio Manager to manage the Fund on a day-to-day basis, and retained the right to terminate the Senior Portfolio Manager.

14. As part of his supervisory function, Szilagyi spoke in person and telephonically with the Senior Portfolio Manager regarding the Senior Portfolio Manager’s management of the Fund. During this time period, the Senior Portfolio Manager did not manage the Fund consistent with his and CCA’s representations in written marketing materials and in telephone calls with investment advisers. Szilagyi did not confirm with the Senior Portfolio Manager whether the Senior Portfolio Manager managed the Fund’s portfolio risk levels as represented.

15. For example, on or about December 9, 2016, Szilagyi learned that the Senior Portfolio Manager had exposed the Fund to significant risk of loss and convened a telephonic meeting with the Senior Portfolio Manager and others at CCA “to discuss what we can do to immediately reduce risk in the [F]und.”

16. During this December 2016 telephonic meeting, Szilagyi asked that the Senior Portfolio Manager reduce risk in the Fund but Szilagyi did not take steps to determine whether the Senior Portfolio Manager actually did so. Had Szilagyi done so, he would have learned that the Senior Portfolio Manager was not managing the Fund’s portfolio risk levels as represented. For example, the Senior Portfolio Manager had not exited positions or otherwise reduced risk in response to the Fund’s exposure to an 8% or greater loss.

17. Instead, it was not until January 25, 2017 – after Szilagyi learned that the Fund had lost more than 4% on a day when the S&P “wasn’t even up 1%” and continued to maintain significant exposure to loss (“approximately -250% net exposure and about 2500% gross exposure”) – that Szilagyi texted the Senior Portfolio Manager to inquire: “What is going on? I thought we agreed to take the exposure down.”

18. The Fund breached its written risk parameters during the majority of the trading days between the December 2016 telephonic meeting and January 25, 2017, when Szilagyi texted

the Senior Portfolio Manager. During that period, the Senior Portfolio Manager did not manage the Fund's portfolio risk levels as represented.

19. Szilagyi, as the Senior Portfolio Manager's supervisor, did not take reasonable steps to confirm, and, at that time, had not implemented procedures for detecting, whether the Senior Portfolio Manager managed the Fund's portfolio risk levels as represented.

C. CCA's Remedial Efforts

20. In 2017, after the Commission's investigation had begun, CCA voluntarily retained an outside consultant to review and evaluate CCA's risk procedures and practices, and has made structural enhancements to its risk management and supervisory functions.

Violations

21. As a result of the conduct described above, CCA willfully² violated Section 206(2) of the Advisers Act, which prohibits any investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. A violation of Section 206(2) may rest on a finding of simple 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, 195 (1963)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.*

22. As a result of the conduct described above, CCA willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which make it unlawful for any investment adviser to a pooled investment vehicle to make any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle, or otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act and the rules thereunder. *Steadman*, 967 F.2d at 647.

23. As a result of the conduct described above, Szilagyi failed reasonably to supervise the Senior Portfolio Manager within the meaning of Section 203(e)(6) of the Advisers Act, which authorizes the Commission to institute an administrative proceeding against a supervisor who has failed to supervise, with a view to preventing violations of the federal securities laws,

² "Willfully," for purposes of imposing relief under Sections 203(e) and 203(f) of the Advisers 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. 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).

another person who commits such a violation, if such person is subject to the supervisor's supervision.

24. As a result of the conduct described above, Szilagyi was a cause of CCA's violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

Undertakings

25. CCA and Szilagyi agree to cooperate fully with the Commission in any and all investigations, litigations, or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, CCA and Szilagyi shall: (i) produce, without service of a notice or subpoena, any and all non-privileged documents and other information reasonably requested by the Staff; (ii) use their best efforts to cause CCA's officers, employees, and directors (including Szilagyi) to be interviewed by the Staff at such time as the Staff may reasonably direct; (iii) provide any certification or authentication of business records of the company as may be reasonably requested by the Staff; and (iv) use their best efforts to cause CCA's officers, employees, and directors (including Szilagyi) to appear and testify without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Staff.

26. In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

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

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

A. Respondents CCA and Szilagyi shall cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder.

B. Respondents CCA and Szilagyi are censured.

C. Respondents CCA and Szilagyi shall pay disgorgement, prejudgment interest, and civil monetary penalties totaling \$10,508,481 as follows:

- i. Respondent CCA shall pay disgorgement of \$8,176,722 and prejudgment interest of \$731,759, consistent with the provisions of this Subsection C.
- ii. Respondent CCA shall pay a civil monetary penalty of \$1,300,000, consistent with the provisions of this Subsection C.

- iii. Respondent Szilagyi shall pay a civil monetary penalty of \$300,000, consistent with the provisions of this Subsection C.
- iv. Payment, up to the amount of \$1,300,000, made within ten (10) days of issuance of this Order by Respondent CCA in satisfaction of the “Catalyst CMP Obligation,” as that term is defined in the Order Instituting Proceedings Pursuant to Section 6(c) and 6(d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions entered in *In the Matter of Catalyst Capital Advisors, LLC and Jerry Szilagyi*, Commodity Futures Trading Commission (“CFTC”) Docket No. 20-13 (January 27, 2020) (the “CFTC Order”), shall be credited toward the \$1,300,000 civil monetary penalty ordered in Paragraph ii of this Subsection C upon Respondent CCA’s presentment of satisfactory evidence to SEC staff establishing that such payment was timely made and received by the CFTC in connection with the CFTC Order.
- v. Payment, up to the amount of \$300,000, made within ten (10) days of issuance of this Order by Respondent Szilagyi in satisfaction of the “Szilagyi CMP Obligation,” as that term is defined in the CFTC Order, shall be credited toward the \$300,000 civil monetary penalty ordered in Paragraph iii of this Subsection C upon Respondent Szilagyi’s presentment of satisfactory evidence to SEC staff establishing that such payment was timely made and received by the CFTC in connection with the CFTC Order.
- vi. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund for distribution to account holders who purchased or held an interest in the Fund during the time period of December 1, 2016 through February 28, 2017 (each, an “affected investor”) is created for the \$10,508,481 in disgorgement, prejudgment interest, and penalties paid by Respondents as described above, less any credits set forth in Paragraphs iv and v of this Subsection C. The disgorgement represents Catalyst’s portion of the net investment advisory fees that affected investors paid during the time period of December 1, 2016 through February 28, 2017. 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 a civil penalty 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 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 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.

- vii. Within ten (10) days of issuance of this Order, Respondents shall deposit \$10,508,481 of the disgorgement, prejudgment interest, and civil monetary penalties, less any credits granted pursuant to Paragraphs iv and v of this Subsection C (the “Fair Fund”) into an escrow account at a financial institution not unacceptable to the Commission staff and Respondents shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717.
- viii. Respondents shall be responsible for administering the Fair Fund and may hire a professional to assist them in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondents and shall not be paid out of the Fair Fund.
- ix. Respondents shall pay from the Fair Fund to each affected investor an amount representing the *pro-rata* advisory fees incurred by the affected investor during the time period of December 1, 2016 through February 28, 2017 pursuant to a disbursement calculation (the “Calculation”) that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. No portion of the Fair Fund shall be paid to any affected investor account in which any Respondents or any of their current or former officers or directors or any of the current or former portfolio managers of the Fund have a financial interest.
- x. Respondents shall, within ninety (90) days of the entry of this Order, submit a proposed Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondents shall, and shall cause any third-parties or professionals retained by Respondents to assist in formulating the methodology for its Calculation and/or administration of the Distribution to, make themselves available for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondents shall also provide to the Commission staff such additional information and supporting

documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondents' proposed Calculation or any of its information or supporting documentation, Respondents shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that Respondents are notified of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

- xi. After the Calculation has been approved by the Commission staff, Respondents shall submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected investor. The Payment File should identify, at a minimum: (1) the name of each affected investor, (2) the exact amount of the payment to be made from the Fair Fund to each affected investor, and (3) the amount of any *de minimis* threshold to be applied.
- xii. Respondents shall complete the disbursement of all amounts payable to affected investor accounts within 90 days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in Paragraph xvi of this Subsection C.
- xiii. If Respondents are unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor account or any factors beyond Respondents' control, Respondents shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934, pursuant to the instructions set forth in Subsection D, below, when the distribution of the funds is complete and before the final accounting provided for in Paragraph xv of this Subsection C is submitted to Commission staff.
- xiv. A Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondents shall be responsible for any and all tax compliance responsibilities associated with the Fair Fund, including but not limited to tax obligations resulting from the Fair Fund's status as a QSF and the Foreign Account Tax Compliance Act ("FATCA"), and may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondents and shall not be paid out of the Fair Fund.
- xv. Within 150 days after Respondents complete the distribution of all amounts payable to affected investors, Respondents shall return all undistributed funds to the Commission pursuant to the instructions set forth in Subsection D, below. The Respondents shall then then submit to the Commission staff

a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall be in a format to be provided by the Commission staff. The final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of money transferred; (4) the amount of any returned payment and the date received; (5) a description of any effort to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondents have made payments from the Fair Fund to affected investors in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies CCA and Szilagyi as Respondents in these proceedings and the file number of these proceedings to Paul A. Montoya, Assistant Regional Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, Illinois 60604. Respondents shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

- xvi. The Commission staff may extend any of the procedural dates set forth in Paragraphs vii through xv of this Subsection C for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

D. Payments of any amounts required to be paid to the Commission must be made in one of the following ways:

1. Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
2. Respondents 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. Respondents 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 and Szilagyi as Respondents 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 Paul A. Montoya, Assistant Regional Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, Illinois 60604.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Szilagyi, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Szilagyi under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violations by Szilagyi of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary