

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5732 / May 10, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20286

In the Matter of

Peter J. DeCaprio,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 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(f) and 203(k) of the Investment Advisers Act of 1940 (“Investment Advisers Act”) against Peter J. DeCaprio (“Respondent” or “DeCaprio”).

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 him 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(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 Respondent's Offer, the Commission finds¹ that:

A. SUMMARY

1. This matter arises from the failure of former registered investment adviser Crow Point Partners, LLC ("Crow Point") and its principal Peter J. DeCaprio ("DeCaprio") to disclose certain conflicts of interest to advisory client the EAS Crow Point Alternatives Fund ("EAS Fund"), an open-end mutual fund. Between April 2015 and June 2016, through DeCaprio, Crow Point made a series of investments of the EAS Fund's assets into an unregistered fund ("Private Fund") and did so through an investment adviser-sponsored investment platform ("Investment Platform"). However, Crow Point had several business arrangements with the Private Fund and the Investment Platform, which created conflicts of interest.

2. As investment advisers, Crow Point and DeCaprio owed a fiduciary duty to their client, the EAS Fund. This duty included the duty to disclose all material facts, including any conflicts of interest, so that the EAS Fund had sufficient facts to understand the conflicts and make informed decisions. The relationships that DeCaprio, as principal of Crow Point and portfolio manager of the EAS Fund, negotiated and facilitated between Crow Point and the Private Fund, Investment Platform, and others described herein created conflicts of interest that Crow Point and DeCaprio did not disclose to the EAS Fund or its trustees. As a result, DeCaprio willfully violated Section 206(2) of the Investment Advisers Act.

B. RESPONDENT

3. **Peter J. DeCaprio** ("DeCaprio" or "Respondent"), age 58, is a resident of Boston, Massachusetts. DeCaprio served as co-founder, President, and CEO of Crow Point. DeCaprio was one of Crow Point's three control persons, and owned more than 25% of the firm. During the relevant period, DeCaprio was an investment adviser to and the portfolio manager for the EAS Fund, solely responsible for all investment decisions, and compensated through an annual salary from Crow Point. DeCaprio also had responsibility for reviewing Crow Point's Forms ADV Part 2A to ensure that they were complete and accurate, including with respect to disclosure of conflicts of interest.

C. OTHER RELEVANT ENTITIES

4. **Crow Point Partners, LLC** ("Crow Point"), a Delaware limited liability company, headquartered in Hingham, Massachusetts, was an investment adviser registered with the Commission until June 4, 2020, when Crow Point withdrew its registration. From 2006 until 2020, Crow Point served as investment adviser to several mutual funds, including to the EAS Crow Point Alternatives Fund (the "EAS Fund") from 2013 to 2020. Crow Point ceased operations in mid-2020.

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

5. **EAS Crow Point Alternatives Fund** (“EAS Fund”), a pooled investment vehicle operating as an open-end mutual fund, was a series of the Northern Lights Trust Fund, an investment company registered with the Commission and headquartered in Omaha, Nebraska, until October 2017, when it became a series of the 360 Funds, an investment company registered with the Commission and headquartered in Fairway, Kansas.

6. **Investment Platform**, is a Delaware limited partnership and unregistered fund that operates as an investment platform and was managed by principals of Crow Point’s prime broker during the relevant period. The Investment Platform offers approximately 15 underlying unregistered funds into which investments can be allocated. An investor invests in the Investment Platform and then directs the Investment Platform as to how to allocate the investment among the underlying unregistered fund options.

7. **Investment Platform Adviser**, a Delaware limited liability company, is an investment adviser registered with the Commission and headquartered in New York, New York, and serves as the investment adviser to the Investment Platform. The Investment Platform Adviser selects the funds to offer as investment options on the Investment Platform.

8. **Private Fund**, a Delaware limited liability company, is an unregistered fund available as an investment option on the Investment Platform. Series A of Private Fund served as a “feeder fund” to an affiliated unregistered fund, a British Virgin Islands business company with its principal place of business in Tortola, British Virgin Islands.

9. **Private Fund Adviser**, a Delaware limited liability company, is an investment adviser registered with the Commission and headquartered in New York, New York and served as an investment adviser to Private Fund during the relevant period.

D. FACTS

Crow Point Background

10. During the relevant period, Crow Point was a registered investment adviser that acted as an adviser or sub-adviser to registered and unregistered funds, pension and profit sharing plans, and high net worth individuals. Crow Point was principally owned and controlled by three managing directors, one of whom was DeCaprio. As of 2019, Crow Point managed approximately \$920 million in assets.

The EAS Fund’s Investments in the Investment Platform

11. Between April 2015 and June 2016, at DeCaprio’s direction, Crow Point made a series of investments of the EAS Fund’s assets, through the Investment Platform, into the Private Fund. In March 2016, Crow Point, through DeCaprio, began substantially increasing the amount of EAS Fund assets invested in the Private Fund. Due to the additional investments in the Private Fund, as well as redemptions in the EAS Fund, by April 2016, the EAS Fund’s investment in the Private Fund comprised more than 15% of the EAS Fund’s net assets and, as of July 31, 2016, the investment in the Private Fund comprised 27.6% of the EAS Fund’s net assets. In total, the EAS Fund invested \$8,050,000 in the Private Fund. Over \$3 million of those assets remained invested, through the Investment Platform, in the Private Fund until 2020.

12. From at least September 2015 through January 2017, Crow Point had material financial ties to both the Private Fund Adviser and the Investment Platform Adviser. These relationships created conflicts of interest which were not disclosed to the EAS Fund.

13. These undisclosed conflicts of interest arose from the following:

- (1) Crow Point's serving as a sub-adviser to an affiliated unregistered fund of Private Fund;
- (2) A mutual business referral agreement between Crow Point and the Investment Platform Adviser;
- (3) DeCaprio's seeking of a substantial investment into a fund in formation to be advised by Crow Point from an individual who was chairman of the Private Fund Adviser and a board member of the Investment Platform Adviser; and
- (4) The addition of an unregistered fund advised by Crow Point as an investment option available through the Investment Platform.

Sub-Advisory Agreement

14. From September 23, 2015 to September 1, 2016, when Crow Point resigned, Crow Point served as a sub-adviser to an affiliated unregistered fund of Private Fund based in the British Virgin Islands.

15. DeCaprio negotiated and signed the Sub-Advisory Agreement with the Private Fund Adviser and the affiliated unregistered fund on behalf of Crow Point.

16. Pursuant to the Sub-Advisory Agreement, Crow Point managed up to \$6.6 million of the affiliated unregistered fund's assets and was entitled to be compensated through a performance fee of 25% on any gains on these assets over specified periods. Because of this fund's performance, Crow Point's total fees were limited to payments of only \$161.78 in 2015 and \$5,332.49 in the first quarter of 2016.

17. Crow Point's serving as a sub-adviser to an affiliated unregistered fund of Private Fund Adviser, and entitlement to fees, while investing the EAS Fund's assets in the Private Fund, created a conflict of interest that was not disclosed to the EAS Fund.

Mutual Business Referral Agreement

18. For the period from June 15, 2016 until January 23, 2017, Crow Point and the Investment Platform Adviser maintained a Mutual Referral Agreement under which Crow Point and the Investment Platform Adviser agreed to compensate one another for referring assets under management. The agreement specified that Crow Point would pay the Investment Platform Adviser a quarterly fee of 0.625% for any assets under management referred to Crow Point and

that the Investment Platform Adviser would pay Crow Point a quarterly fee of 25% of the gross margin on any collected fees from any clients referred by Crow Point.

19. Pursuant to the agreement, which DeCaprio negotiated and signed on behalf of Crow Point, the EAS Fund received approximately \$15 million in assets under management referred by the Investment Platform Adviser, from which Crow Point could have received management fees of up to 1% per annum. (The management fee was subject to a contractual fee cap which reduced the management fees to about 0.25% for the year ended April 30, 2016 and about 0.64% for the year ended April 30, 2017.) Crow Point ultimately paid the Investment Platform Adviser \$8,033 in referral fees over the term of the agreement.

20. The Mutual Referral Agreement between Crow Point and the Investment Platform Adviser created conflicts of interest for Crow Point. Crow Point and DeCaprio were incentivized to maintain the EAS Fund's investment in the Investment Platform (1) to encourage the Investment Platform Adviser to continue to refer assets under management to the EAS Fund from which Crow Point received management fees; and (2) to receive a reduction in the referral fees that Crow Point owed to the Investment Platform Adviser under the Mutual Referral Agreement. These conflicts were not adequately disclosed to the EAS Fund.

Solicitation of Investment

21. From April to June of 2016, DeCaprio repeatedly sought an investment from an individual who was the chairman of the Private Fund Adviser and a board member of the Investment Platform Adviser into a new fund in formation, the Crow Point Global Dividend Plus Fund, launched by Crow Point in June 2016. In a June 6, 2016 email to a principal of the Private Fund Adviser, DeCaprio referred to the connection between his investment of the EAS Fund's assets in the Private Fund and his solicitation of an investment from the individual: "Discuss what? I was supposed to pump 1.5 mil more into [the Private Fund], which I did, taking our stake up to \$8.0 mil. [The individual] was then going to stroke a \$5 mil check for the [Global Dividend Plus Fund]."

22. While the individual did not make an investment into the new Crow Point fund, DeCaprio's seeking of a potential investment from the individual, while directing the EAS Fund's assets to the Private Fund through the Investment Platform, created an incentive for Crow Point and DeCaprio to put their interests ahead of the EAS Fund's interests, a conflict of interest that was not disclosed to the EAS Fund.

Crow Point L/S Portfolio, L.P. Investment Option

23. In addition, from at least March to August 2016, during the same time period that Crow Point, through DeCaprio, was increasing the EAS Fund's investment in the Private Fund through the Investment Platform, an unregistered fund managed by Crow Point, Crow Point L/S Portfolio, was made available as an investment option on the Investment Platform.

24. DeCaprio had discussions with the Investment Platform Advisor about having the Crow Point L/S Portfolio included on the Investment Platform, and it is through these discussions that it became an investment option. Consistent with the Investment Platform Adviser's arrangement with the advisers to the underlying funds on its Investment Platform, Crow Point and

the Investment Platform Adviser would have split the asset management fees on assets invested in the Crow Point L/S Portfolio through the Investment Platform if any assets had been invested in that investment option.

25. While the Crow Point L/S Portfolio did not receive any investments via the Investment Platform, DeCaprio's push for the Crow Point L/S Portfolio, L.P. to be included as an investment option on the Investment Platform, through which both Crow Point and the Investment Platform Adviser had an opportunity to earn asset management fees, created an incentive for Crow Point and DeCaprio to direct EAS Fund assets to the Investment Platform, a conflict of interest that was not disclosed to the EAS Fund.

**Crow Point and DeCaprio Did Not Adequately
Disclose the Conflicts of Interest Connected to the Investment Platform**

26. As investment advisers, Crow Point and DeCaprio were obligated to disclose fully all material facts to their advisory client the EAS Fund, including any conflicts of interest. The overlapping business between Crow Point and the Private Fund, the Private Fund Adviser, and the Investment Platform Adviser, described above, which business arrangements DeCaprio negotiated, created conflicts of interest between Crow Point and DeCaprio and the EAS Fund. Crow Point and DeCaprio failed to disclose these conflicts to the EAS Fund or its trustees in Form ADV or otherwise.

27. Form ADV Part 2A requires an investment adviser to disclose material conflicts of interest, including relationships with other investment advisers. On March 31, 2016, Crow Point filed a Form ADV Part 2A that stated that its relationships with other financial industry participants were "[n]ot applicable."

28. As of March 31, 2016, Crow Point's sub-advisory relationship with the Private Fund Adviser was ongoing, and thus the statement that its relationships with other financial industry participants was "not applicable" was misleading. Crow Point further failed to promptly file an amended Form ADV Part 2A to disclose the Mutual Referral Agreement and the discount it received as a result of the EAS Fund investment in the Investment Platform. Crow Point also omitted disclosing the Mutual Referral Agreement and the discount received in Crow Point's Part 2A of Form ADV, dated March 31, 2017. DeCaprio was responsible for reviewing drafts of the Form ADV Part 2A for accuracy and completeness and failed to disclose the sub-advisory relationship, the Mutual Referral Agreement, or the discount received.

29. By failing to disclose the conflicts of interest described above or to exercise reasonable care when reviewing Crow Point's Forms ADV Part 2A, DeCaprio breached his fiduciary duties to the EAS Fund.

E. VIOLATIONS

30. As a result of the conduct described above, DeCaprio willfully² violated Section 206(2) of the Investment Advisers Act which prohibits an investment adviser from, directly or indirectly, 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) of the Investment Advisers Act 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)).

IV.

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

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

- A. Respondent DeCaprio is censured.
- B. Respondent DeCaprio shall cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Investment Advisers Act.
- C. Respondent DeCaprio shall, within 30 days of entry of this Order, pay a civil money penalty in the amount of \$75,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to the Securities Exchange Act of 1934 Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 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

² "Willfully," for purposes of imposing relief under Section 203(f) of the Investment Advisers Act of 1940, "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).

- (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 DeCaprio 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 Amy L. Friedman, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5010.

D. 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, he shall not argue that he is entitled to, nor shall he 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 he 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.

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 Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent 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 violation by Respondent 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