

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10851 / September 24, 2020

INVESTMENT ADVISERS ACT OF 1940
Release No. 5590 / September 24, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20057

In the Matter of

STEVEN ROSEN,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF
THE SECURITIES ACT OF 1933,
SECTIONS 203(f) AND 203(k) OF
THE INVESTMENT ADVISERS
ACT OF 1940, AND RULE
102(e)(1)(iii) OF THE
COMMISSION’S RULES OF
PRACTICE, 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 Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice against Steven Rosen (“Rosen” 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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act, Sections 203(f) and 203(k) of the Advisers Act, and Rule

102(e)(1)(iii) of the Commission’s Rules of Practice, 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:

Summary

1. TCA Fund Management Group Corp. (“TCA”) is the registered investment adviser to TCA Global Credit Master Fund, LP (the “Master Fund”) and its two feeder funds, TCA Global Credit Fund, LP (“Feeder Fund LP”) and TCA Global Credit Fund, Ltd. (“Feeder Fund Ltd.”) (collectively, the “TCA Funds”). TCA Global Credit Fund GP, Ltd. (“GP”) is the general partner to the Master Fund and Feeder Fund LP. The Master Fund focused solely on investing in short-term, senior secured debt and equity-related investments, and providing investment banking services for a fee to small and medium-sized companies. The feeder funds invested substantially all of their assets into the Master Fund.

2. TCA and GP fraudulently inflated the TCA Funds’ net asset value (“NAV”) and performance results through the recording of non-binding transactions from 2010 through December 2016, and through the recording of fees associated with four agreements with other companies to provide investment banking services in late 2016. TCA also misled the TCA Funds’ investors with respect to the performance of the TCA Funds by improperly including a promissory note of \$34.3 million as income in the Master Fund’s 2015 financial statements. Respondent Rosen prepared worksheets for the TCA Funds’ monthly NAV that included these non-binding transactions and fees associated with the four investment banking agreements. Rosen then sent this information to an outside independent fund administrator (the “fund administrator”) who used it to calculate the TCA Funds’ monthly NAV and performance results. Rosen knew or should have known that the data he was providing to the fund administrator would fraudulently inflate the TCA Funds’ NAV and performance figures.

Respondent

3. **Steven Rosen**, age 51, resides in Kew Gardens, New York. Rosen worked at TCA from February 2016 until July 2018, and held the positions of Chief Accounting Officer and Chief Financial Officer. He has never been licensed as a certified public accountant.

Relevant Entities

4. **TCA Fund Management Group Corp.** is an investment adviser registered with the Commission since August 13, 2014. TCA is a Florida corporation headquartered in Aventura, Florida, with other offices in New York, Las Vegas, London, and Melbourne, Australia.

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. **TCA Global Credit Fund GP, Ltd.** is a Cayman Islands company formed in January 2010. GP serves as the general partner of Feeder Fund LP and the Master Fund.

6. **TCA Global Credit Fund, LP.** is a Cayman Islands limited partnership formed in March 2010. Feeder Fund LP engaged in investment activities as an unregistered private investment fund. TCA serves as Feeder Fund LP's investment adviser and GP is its general partner.

7. **TCA Global Credit Fund, Ltd.** is a Cayman Islands company formed in March 2010. Feeder Fund Ltd. engaged in investment activities as an unregistered private investment fund. TCA serves as Feeder Fund Ltd.'s investment adviser.

8. **TCA Global Credit Master Fund, LP.** is a Cayman Islands limited partnership formed in March 2010. It serves as the master fund in a master-feeder structure for Feeder Fund LP and Feeder Fund Ltd. TCA serves as the Master Fund's investment adviser and GP is its general partner.

Facts

A. Background

9. TCA has served as the investment adviser to the TCA Funds from September 2011 to the present. TCA's Master Fund focused solely on providing short-term, senior secured debt and equity-related investments, and providing investment banking services for a fee to small and medium-sized companies ("portfolio companies"). Feeder Fund LP and Feeder Fund Ltd. raised money from investors through private sales of securities in the funds, which was then invested in limited partnership interests in the Master Fund. Upon investing, investors in Feeder Fund Ltd. received shares, and investors in Feeder Fund LP received limited partnership interests. As of November 30, 2019, the TCA Funds reported a consolidated net asset value of \$516 million and had a combined total of about 470 investor accounts.

B. The Master Fund's Investment Strategy

10. The Master Fund provided financing investments of about \$1 to \$5 million to small and medium-sized enterprises. A typical financing had interest rates ranging from 12% to 18% per year, and required the company borrower to pay various fees at closing and over the duration of the loan. After an initial vetting process, the Master Fund and the potential borrower signed a non-binding "term sheet" that set forth the possible financing terms (amount and duration of the loan, interest rate, fees, etc.), and the company would pay a small fee in order to proceed to further due diligence review by TCA's underwriting department. If the company met TCA's criteria during the underwriting due diligence process, then transaction documents were signed and executed at closing by the borrower and by TCA on behalf of the Master Fund.

11. When a financing transaction did go through, company borrowers were usually also required to sign either an "investment banking" or "advisory services" agreement ("IB

Agreement”) with the Master Fund at closing. The IB Agreements required companies to pay an “investment banking” or “advisory” fee (“IB Fee”) to the Master Fund that was “earned upon execution” of the agreement, in consideration for certain services the Master Fund claimed it would provide the company. These services, which would be provided by TCA on behalf of the Master Fund, purportedly included identifying mergers and acquisitions (M&A) opportunities, preparing business plans and financial models, and assisting with SEC reports.

C. TCA Inflated the TCA Funds’ Monthly NAV and Performance Figures

12. Feeder Fund LP and Feeder Fund Ltd.’s private placement memoranda (“PPMs”) state that their NAV inputs are calculated on an accrual basis in accordance with International Financial Reporting Standards (“IFRS”). Pursuant to the Master Fund’s limited partnership agreement, TCA was responsible for valuation of the Master Fund’s assets. Accordingly, every month, TCA, through Respondent Rosen, sent valuation information on the Master Fund’s investment portfolio to the fund administrator hired to calculate the TCA Funds’ NAV and performance figures, and account balances for the feeder funds’ investors based on those NAV and performance figures. The information the fund administrator received from TCA, which Respondent Rosen helped prepare, included monthly listings, spreadsheets and workbooks of the recorded loan and investment banking transactions, as well as any removed and impaired deals for the month.

1. Inflating of NAV through Improperly Recorded Non-Binding Term Sheets

13. From inception through December 2016, TCA routinely recorded financing deals as revenue on the Master Fund’s financial statements on the date borrower companies signed non-binding term sheets (“term sheet only deals”). Specifically, TCA recorded as revenue on the Master Fund’s books the unearned accrued interest and fees associated with the term sheet only deals. This is the interest and fees that the borrower company would pay on the loan if the financing deal went through and became final and binding. Once recorded, the interest and fees were also recorded as assets of the Master Fund in the form of receivables, and were counted as part of the calculation of the Master Fund’s monthly NAV going forward, therefore artificially inflating NAV for every month the interest and fees were included in the calculation. The NAV of each of the feeder funds was also artificially inflated because substantially all of their respective assets consisted of limited partnership interests of the Master Fund.

14. TCA recorded these transactions in order to fraudulently inflate the TCA Funds’ NAV and show consistently positive performance results for the TCA Funds. On a regular basis, TCA would add new term sheet only deals to the Master Fund’s NAV calculations and would remove various old ones. Because the previously recorded revenue had to be reversed when a term sheet only deal was removed, TCA’s actions in adding and removing these transactions had the effect of obscuring the TCA Funds’ true monthly performance.

15. Each month TCA decided which term sheet only deals to record on the Master Fund’s books and which of the previously recorded term sheet only deals that had not closed, to

remove from the books. This information was provided every month to Respondent Rosen beginning around May 2016. Rosen would then include this data in workbooks and send the information to the fund administrator in order to calculate the TCA Funds' monthly NAV and performance figures. The term sheet only deals usually stayed on the Master Fund's books and records for months, and in some cases over a year, before TCA decided to remove them from the Master Fund's books. Even though term sheet only deals had not closed, and in many instances did not lead to consummated transactions, year after year, TCA continued to record these deals as revenue and include them as assets in the valuation information used to calculate the Master Fund's NAV.

16. By recording the term sheet only deals into the Master Fund's financial statements, TCA did not meet the revenue recognition standards set forth in IFRS's International Accounting Standard ("IAS") 18 – Revenue.²

17. As TCA's Chief Accounting Officer and Chief Financial Officer, Respondent Rosen knew or should have known that TCA was recording non-binding term sheet only deals and that signed term sheets in many instances did not lead to consummated transactions. He also knew or should have known that the data he had provided to the fund administrator to calculate NAV included those transactions and that this information would fraudulently inflate the TCA Funds' monthly NAV and performance results. In addition, Rosen knew or should have known that TCA was not following accounting rules when it recorded the term sheet only deals on the Master Fund's books.

18. Effective January 1, 2017, TCA largely stopped its practice of recognizing loan fees as revenue prior to loan funding. As a result, TCA caused certain downward adjustments to be made to the NAV. TCA paid approximately \$1.5 million to investors adversely impacted by its improper recognition of loan fee revenue.

2. Inflating of NAV through Improperly Recorded Investment Banking Fees

19. In late 2016, TCA improperly recorded on the Master Fund's books an aggregate of at least \$34.5 million in revenues from IB Fees associated with four IB Agreements that had not met the revenue recognition standards set forth in IFRS because they were uncollectible. Once recorded as revenue, these IB Fees became part of the TCA Funds' monthly NAV going forward, thereby inflating NAV for every month the IB Fees were captured in the calculation. TCA's sole purpose for entering into these four IB Agreements was to inflate the TCA Funds' NAV and performance results in order to deceive investors. Respondent Rosen included the data relating to these four IB Agreements in workbooks and then sent that information to the fund administrator in order to calculate the TCA Funds' monthly NAV and performance figures.

20. Despite recognizing revenue from these IB Fees upon execution of the agreements, the IB Agreements associated with these four transactions were signed by companies with no significant assets or ability to pay the millions of dollars of IB Fees involved. TCA was aware of

² IAS 18 was superseded by IFRS 15 on January 1, 2018.

this and that the counterparties to these IB Agreements were incapable of paying the IB Fees as of the date of the IB Agreements.

21. The revenue recognition standards set forth in IAS 18 of IFRS were not all met when TCA fraudulently recorded the \$34.5 million in IB Fees on the Master Fund's books. In this situation, because it was not probable that the IB Fees would be collected given the financial condition of the companies involved, the revenue recognition requirements set forth in IAS 18 had not been met when TCA recorded the IB Fees on the Master Fund's books. In addition, at the time of the signing of these IB Agreements, no significant services had been provided by the Master Fund to the companies involved. Although the IB Agreements stated that the IB Fees were earned upon execution, because it was not probable that the IB Fees could be collected, they should not have been recorded as revenue. TCA recorded these IB Fees solely to deceive investors by propping up the TCA Funds' NAV and performance results.

22. Respondent Rosen helped prepare the data relating to the four IB Agreements and sent this information to the fund administrator in order to calculate the TCA Funds' monthly NAV and performance figures. Rosen knew or should have known that these IB Agreements were signed with companies without the resources to pay the multi-million dollar IB Fees involved. Rosen also knew or should have known that the data he had provided to the fund administrator to calculate NAV included those uncollectible IB Fees. In addition, Rosen knew or should have known that TCA was not following accounting rules when it recorded these IB Fees on the Master Fund's books.

3. Dissemination of False and Misleading Information to Investors Regarding NAV and Performance Figures

23. TCA distributed monthly "Fact Sheets" and newsletters to the TCA Funds' investors and prospective investors that included inflated NAV balances and false performance figures from the fraudulently recorded term sheet only deals and the four IB Agreements discussed. As a result of the inflated NAVs and performance figures, TCA and GP also distributed monthly account statements to investors containing false information regarding their monthly returns and investment balances. Indeed, the TCA Funds had never reported a down month. In reality, without these term sheet only deals and four IB Agreements, the TCA Funds would have had at least 17 months of negative returns during the relevant period. Respondent Rosen knew or should have known that the NAV and performance results that were sent to investors included figures from the fraudulently recorded term sheet only deals and four IB Agreements.

D. Fraudulent Promissory Note between TCA and the Master Fund

24. To avoid having to report a net operating loss stemming from a \$29 million markdown in investment income that had been identified by the TCA Funds' then-outside auditor, in late April 2016, TCA recorded as "Other Income" on the Master Fund's 2015 financial statements a \$34.3 million assignment of income from TCA to the Master Fund in the form of a promissory note. The agreement for the assigned income and accompanying promissory note issued by TCA in favor of the Master Fund were both dated as of December 31, 2015. This

assigned income ostensibly increased the Master Fund's gross income by that amount and resulted in the fund reporting a net income of about \$30.7 million for the year.

25. The \$34.3 million assignment of income and promissory note were part of a deceptive course of conduct that misled investors. Without the purported income from the promissory note, TCA faced the prospect of reporting operating losses on the TCA Funds' year-ended 2015 audited financial statements because of the adjustments to revenue the outside auditor had identified. Since TCA was required to provide these financial statements to investors, the loss would have contradicted the 12 months of positive gains TCA had already reported in the TCA Funds' monthly Fact Sheets and account statements throughout the year. TCA and GP used the recording of the assignment of income on the Master Fund's financial statements as a way to continue to mislead investors into believing that the TCA Funds had positive performance derived from their investment activity.

26. The notes to the Master Fund's 2015 financial statements also falsely claimed that the assignment of income and accompanying promissory note were the result of the Master Fund having "merged its business practices to be in compliance with current revenue recognition" standards in accordance with IFRS. To the contrary, this transaction had nothing to do with IFRS requirements.

27. Respondent Rosen worked on the substance of the assignment of income and promissory note, and helped finalize those documents. Rosen was also TCA's point person with the auditor on discussions regarding the assignment of income and how it should be reported on the financial statements. In addition, he recorded the transaction on the Master Fund's books and records. Rosen knew or should have known that this assignment of income and accompanying promissory note were a way to avoid having to report a loss on the Master Fund's financial statements.

Violations

28. As a result of the conduct described above, Rosen willfully³ aided and abetted and caused TCA's and GP's violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act. Section 17(a)(2) makes it unlawful, in the offer or sale of securities, to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. Section 17(a)(3) makes it unlawful, in the offer or sale of securities, to engage in any transaction, practice or course of business that operates as a fraud or deceit upon the purchaser. Sections 17(a)(2) and 17(a)(3) of the Securities Act do not require a showing of scienter, negligence is sufficient. *See Aaron v. SEC*, 446 U.S. 680, 697, 701-02 (1980).

29. As a result of the conduct described above, Rosen willfully aided and abetted and caused TCA's violations of Sections 206(2) and 206(4) of the Advisers Act, and Rule 206(4)-8

³ "Willfully," for purposes of imposing relief under Section 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)).

promulgated thereunder, which make it unlawful for any investment adviser to a pooled investment vehicle to “[m]ake any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle,” or “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.” A violation of Section 206(2) of the 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)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act, and 206(4) of the Advisers Act and the rules thereunder. *Id* at 643 n.5, 647.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Sections 203(f) and 203(k) of the Advisers Act, and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice, it is hereby ORDERED that:

A. Respondent Rosen shall 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(2) and 206(4) of the Advisers Act and Rule 206(4)-8 promulgated thereunder.

B. Respondent Rosen be, and hereby is, subject to the following limitations on his activities:

- (1) Respondent shall not act in a director or officer capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and
- (2) Respondent may apply to act in such a capacity after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any application to act in such a director or officer capacity will be subject to the applicable laws and regulations governing the reentry process, and permission to act in such a capacity 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 or civil penalties ordered by a Court against the Respondent in any action brought by the Commission; (b) any disgorgement amounts ordered against the Respondent for which the Commission waived payment; (c) any arbitration award related to the conduct that served as the basis for the Commission Order; (d) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission Order; and (e) any restitution order by a self-regulatory

organization, whether or not related to the conduct that served as the basis for the Commission Order.

D. Respondent Rosen is denied the privilege of appearing or practicing before the Commission as an accountant.

E. After three (3) years from the date of this order, Respondent Rosen may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as an accountant.

F. Respondent Rosen shall pay a civil penalty of \$35,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments: the first installment of \$5,000 upon the entry of this Order; subsequent installments of \$5,000 shall be paid within 60 days, 120 days, 180 days, 240 days, 300 days, and 360 days from the date of this Order. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. §3717. Prior to making the final payment set forth herein, Rosen shall contact the staff of the Commission for the amount due. If Rosen fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

G. 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 Steven Rosen 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 Chedly C. Dumornay, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 801 Brickell

Avenue, Suite 1950, Miami, Florida, 33131, or such other address as the Commission staff may provide.

H. 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 Rosen, and further, any debt for civil penalty or other amounts due by him 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