

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10990 / September 30, 2021

INVESTMENT ADVISERS ACT OF 1940
Release No. 5878 / September 30, 20201

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4262 / September 30, 2021

ADMINISTRATIVE PROCEEDING
File No. 3 - 20609

In the Matter of

DONNA M. SILVERMAN,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933 AND 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 Section 8A of the Securities Act of 1933 (“Securities Act”) and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Donna M. Silverman (“Silverman” 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 her 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 and Sections 203(f) and 203(k) of the Advisers Act,

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 fraudulent investment banking fees from January 2016 through November 2019. Respondent Silverman included non-binding transactions and fraudulent investment banking fees in information that others in TCA later sent to an outside independent fund administrator (the “fund administrator”), who used it to calculate the TCA Funds’ monthly NAV and performance results. Silverman knew or should have known that this data, which was subsequently provided by others in TCA to the fund administrator, would fraudulently inflate the TCA Funds’ NAV and performance figures.

Respondent

3. Donna M. Silverman, age 62, resides in Sparta, New Jersey. From August 2014 until December 2017, Silverman served as TCA’s Chief Portfolio Manager.

Relevant Entities

4. TCA Fund Management Group Corp. was formed in 2011 and 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.

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.

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.

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.

District Court Action

9. On May 11, 2020, the Commission filed a partially settled civil action in United States District Court for the Southern District of Florida against TCA and GP based on violations of the antifraud provisions. The Commission's complaint alleged that between early 2010 through November 2019, TCA and GP fraudulently inflated the TCA Funds' NAV and performance results by recording non-binding transactions and fraudulent investment banking services agreements. On May 12, 2020, the Court entered a consented-to judgment that, among other things, enjoined TCA and GP from future violations of the antifraud provisions. TCA and GP voluntarily consented to the appointment of Jonathan Perlman, Esq. of Genovese Joblove & Battista, P.A. as Receiver over TCA, GP, and the TCA Funds. See SEC v. TCA Fund Management Group Corp. et al., Case No. 1:20-cv-21964 (S.D. Fla.).

Facts

A. Background

10. TCA has served as the investment adviser to the TCA Funds from September 2011 until 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 date of their last reported NAV, 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

11. The Master Fund provided financing investments to small and medium-sized companies. 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, and the company borrower 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 underwriting criteria, then transaction documents were executed at closing by the borrower and by TCA on behalf of the Master Fund.

12. At closing, borrowers were usually also required to sign either an "investment banking" or "advisory services" agreement ("IB Agreement") with the Master Fund. 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 investment banking services that the Master Fund claimed it would provide the company.

13. From at least August 2014 until at least December 2017, Silverman was primarily responsible for originating financing deals for the Master Fund, and managing workout efforts with respect to these transactions. In addition, Silverman prepared information relating to the Master Fund's monthly revenue and portfolio asset values that was incorporated in valuation information that others in TCA sent to the fund administrator each month.

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

14. 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"). TCA was responsible for valuation of the Master Fund's assets, and every month, it 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. Silverman prepared data relating to the Master Fund's monthly revenue and portfolio asset values that was used by other TCA staff to prepare this valuation information. The information the fund administrator received from TCA that Silverman helped prepare, included monthly listings, spreadsheets and workbooks of the recorded loan and investment banking transactions for the month.

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

15. 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 booked 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 inflated because substantially all of their respective assets consisted of limited partnership interests of the Master Fund.

16. TCA recorded these term sheet only deals in order to inflate the TCA Funds' NAV and show consistently positive performance results for the TCA Funds. On a monthly basis, TCA added new term sheet only deals to the Master Fund's NAV calculations and removed various old ones. Silverman participated in the preparation of a list of the term sheet only deals that the Master Fund was to record for the month, as well as the deals that needed to be removed from the books because they had not closed. Once approved internally at TCA, TCA's staff would send this information to the fund administrator in order to calculate the monthly NAV and performance figures.

17. The term sheet only deals usually stayed on the Master Fund's books and records for months before TCA removed them. Even though these deals had not closed, and in many instances, they did not lead to consummated transactions, year after year, TCA included them as revenue and assets in valuation information used to calculate the Master Fund's NAV.

18. 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.

19. TCA's actions in adding and removing these transactions on the Master Fund's books and records had the effect of obscuring the TCA Funds' true monthly performance.

20. Silverman knew or should have known that the data she provided to TCA staff relating to the term sheet only deals resulted in TCA providing data to the fund administrator in order to calculate the TCA Funds' NAV and performance figures, and in TCA recording those deals on the Master Fund's books and records.

21. After the Commission began investigating this matter, TCA stopped its practice of recognizing loan fees as revenue prior to loan funding effective January 1, 2017. 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 revenue recognition of loan fee revenue.

2. Inflating of NAV through Improperly Recorded Investment Banking Fees

22. From January 2016 and continuing through November 2019, TCA improperly recorded on the Master Fund's books a cumulative total of at least \$176 million in revenue from IB Fees associated with numerous IB Agreements that 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 entered into these IB Agreements in order to inflate the TCA Funds' NAV and performance results.

23. Despite recognizing revenue from these IB Fees upon execution of the IB Agreements, TCA was aware that the Master Fund would not be able to collect the \$176 million in fees owed because: (i) TCA never rendered any significant services to the companies with whom it had signed IB Fee agreements; (ii) TCA did not have staff with sufficient knowledge and experience to provide IB services; (iii) most companies that signed IB Agreements understood that the IB Fee was not payable until after they received that financing; and (iv) in many instances, the IB Agreements associated with these deals were signed with companies that had no significant assets or ability to pay the IB Fees involved.

24. The revenue recognition standards set forth in IAS 18 and IFRS 15 (which superseded IAS 18 on January 1, 2018) were not all met when TCA fraudulently recorded the \$176 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 and IFRS 15 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.

25. Between 2016 and December 2017, Respondent Silverman included data relating to these fraudulent IB Agreements in data that others in TCA later sent to the fund administrator in order to calculate the TCA Funds' monthly NAV and performance figures. Silverman knew or should have known that this data relating to the fraudulent IB Fees would be used by the fund administrator to calculate the TCA Funds' NAV and performance figures.

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

26. TCA distributed monthly "Fact Sheets" and newsletters, and GP distributed account statements, to the TCA Funds' investors and/or prospective investors that included inflated NAV balances and false performance figures and monthly returns from the fraudulently recorded term sheet only deals and the IB Agreements. In fact, the TCA Funds had never reported a down month. However, without these transactions, the TCA Funds would have had at least 22 months of negative returns during the period Silverman was employed at TCA. Moreover, as a result of the revenue recognition practices described above, the statements that TCA and GP made in the TCA Funds' PPMs that NAV inputs would be calculated in accordance with IFRS were false and misleading.

Violations

27. As a result of the conduct described above, Silverman willfully aided and abetted and caused TCA's and GP's violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit fraudulent conduct in the offer or sale of securities. 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).

28. As a result of the conduct described above, Silverman willfully aided and abetted and caused TCA's violations of Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit on any client or prospective client. Section 206(2) of the Advisers Act does not require proof of scienter, and violation of this provision can be satisfied by a showing of simple negligence. *See SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992); *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)).

29. As a result of the conduct described above, Silverman willfully aided and abetted and caused TCA's violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which prohibit an investment adviser to a pooled investment vehicle from making misrepresentations or omissions to or otherwise engaging in any act, practice, or course of business that is fraudulent, deceptive or manipulative with respect to any investor or potential investor in the pooled investment vehicle. Section 206(4) of the Advisers Act and the rules thereunder do not require proof of scienter, and violation of these provisions can be satisfied by a showing of simple negligence. *See Steadman*, 967 F.2d at 643 n. 5; *Capital Gains Research Bureau, Inc.*, 375 U.S. at 195.

IV.

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

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

A. Respondent Silverman 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 thereunder.

B. Respondent Silverman be, and hereby is, subject to the following limitations on her 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, compliance with the Commission's order and payment 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 Silverman shall pay a civil penalty in the amount of \$50,000 as follows:

1. Payment shall be made in the following installments: the first installment of \$10,000 upon the entry of this Order; subsequent installments of \$10,000 shall be paid within 90 days, 180 days, 270 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, Silverman shall contact the staff of the Commission for the amount due. If Silverman 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.
2. Payments shall be made to Jonathan E. Perlman, Esq. of Genovese Joblove & Battista, P.A., the Receiver appointed by the United States District Court for the Southern District of Florida in the action SEC v. TCA Fund Management Group Corp. et al., Case No. 1:20-cv-21964 (S.D. Fla.), for inclusion in the receivership estate established in that action and distribution pursuant to a Court-approved distribution plan. Payment must be made in one of the following ways:
 - (a) Respondent may transmit payment electronically to Jonathan E. Perlman, Receiver, who will provide detailed ACH transfer/Fedwire instructions upon request; or
 - (b) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to Jonathan E. Perlman, Receiver, and hand-delivered or mailed to:

Jonathan E. Perlman, Esq., Receiver
Genovese Joblove & Battista, P.A.
100 SE 2nd Street, Suite 400
Miami, Florida 33131

Payments must be submitted under cover letter that identifies Silverman as Respondent in these proceedings, and the file number of these proceedings. Respondent shall simultaneously transmit photocopies of evidence of payment and the cover letter sent to the Receiver to: Chedly C. Dumornay, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 801 Brickell Ave., Suite 1950, Miami, FL 33131.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the civil penalty referenced in paragraph D. above. This Fair Fund may receive the funds from and/or be combined with funds paid by other respondents or defendants, including without limitation defendants in the SEC v. TCA Fund Management Group Corp. et al. litigation. The amount ordered to be paid as a civil money penalty 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, she shall not argue that she is entitled to, nor shall she 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 she 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 Silverman, and further, any debt for civil penalty or other amounts due by her 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