

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 93035 / September 16, 2021

INVESTMENT ADVISERS ACT OF 1940

Release No. 5865 / September 16, 2021

ADMINISTRATIVE PROCEEDING

File No. 3-20565

In the Matter of

**REGAL INVESTMENT ADVISORS LLC,
JOHN A. KAILUNAS, II, AND
BRIAN D. YARCH,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 15(b) OF
THE SECURITIES EXCHANGE
ACT OF 1934 AND 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 Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Regal Investment Advisors LLC (“Regal”), John A. Kailunas, II, and Brian D. Yarch (collectively, “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 Section 15(b) of the Securities Exchange Act of 1934 and 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 finds that:

Summary

1. This matter concerns failures by Regal Investment Advisors LLC and two of its principals to: (i) provide advisory services to certain clients after their investment adviser representatives (“IARs”) left Regal, and (ii) disclose conflicts of interest arising from compensation received from an affiliated portfolio manager. From at least July 2015 through April 2021, Regal, a registered investment adviser, improperly charged \$85,432 in advisory fees to client accounts for which Regal failed to provide advisory services after the departure of the assigned IARs. Regal’s standard practice was to assign two of Regal’s owners, John Kailunas and Brian Yarch, as the new IARs for these accounts (known as “house accounts), but in many instances Kailunas and Yarch failed to provide advisory services to certain of these accounts. In addition, since at least July 2015, Regal has failed to fully and fairly disclose to its advisory clients its financial interest in Durand Capital Partners, LLC (“Durand”), a portfolio management company whose services Regal recommended to some of its clients, and the associated conflicts of interest. Regal also failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its management of house accounts and its disclosure of conflicts of interest. As a result of this conduct, Regal, Kailunas, and Yarch willfully violated Section 206(2) of the Advisers Act, and Regal willfully violated, and Yarch caused Regal’s violations of, Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondents

2. **Regal Investment Advisors LLC**, a Michigan limited liability company with its principal place of business in Kentwood, Michigan, has been registered with the Commission as an investment adviser since October 2010. Regal is owned by three individuals: Kailunas owns 80%, Yarch owns 18%, and a third individual owns 2%. On its Form ADV dated April 9, 2021, Regal reported that it had \$1,936,640,285 in assets under management.

3. **John A. Kailunas II**, age 57, resides in East Grand Rapids, Michigan. Kailunas is a founder, managing member, and chief executive officer of Regal. Kailunas is also a registered representative and indirect co-owner of an affiliated broker-dealer.

4. **Brian D. Yarch**, age 44, resides in Grand Rapids, Michigan. Yarch is a managing member and served as Regal’s chief compliance officer until July 1, 2021. Yarch is also the President and co-owner of an affiliated broker-dealer.

Relevant Entity

5. **Durand Capital Partners, LLC**, is a Michigan limited liability company with its principal place of business in Kentwood, Michigan. Durand was formed in 2012 by an

individual who, at that time, also became a Regal IAR. Durand offers portfolio management services to Regal's clients. Kailunas was one of the original members of Durand, with a 10% ownership interest until he transferred his interest to Regal in March 2015. Since January 1, 2019, Regal Holdings of America, LLC ("Regal Holdings"), an entity owned by Kailunas and Yarch, has held the remaining 90% membership interest in Durand.

Regal's Advisory Services

6. Regal provides investment advisory services to its clients pursuant to an investment advisory agreement. At the outset of the client relationship, a Regal IAR is assigned to manage the account. Regal, through its IAR, serves as "the investment manager to supervise and direct the investments of the [a]ccount in accordance with the client's stated objectives and financial goals. . . ." Regal offers clients three options for the management of their account: (1) the assigned IAR serves as the portfolio manager on a discretionary or non-discretionary basis; (2) the IAR recommends a model portfolio managed by Regal portfolio managers on a discretionary basis ("Regalfolios"); or (3) the IAR recommends a model portfolio managed by one of several third-party portfolio managers offered by Regal ("Third-Party Portfolios"). For the latter two options, the assigned IAR is responsible for making an initial recommendation of the appropriate portfolio based on the client's investment profile and for ongoing review of the account to ensure the selected portfolio remains appropriate.

7. In its Form ADV, Regal advised clients that they would receive "continuous and focused investment advice." The Form ADV further stated that "[a]ccounts are reviewed regularly by your account representative" and that "the reviews ensure that the advisory services provided to you and the portfolio mix is consistent with your current investment needs and objectives."

8. Regal bills its clients a fee made up of two components: an advisory fee for account management services and a portfolio management fee for selection of securities in the account. Regal shares the advisory fees with the assigned IAR. The portfolio management fee is paid to the party responsible for the account's portfolio management. When clients invest in Regal portfolios, Regal receives that fee. However, when clients use a third party manager, the portfolio management fee goes to the third party manager.

House Accounts

9. Until November 2019, Regal lacked written policies and procedures to address the transition of client accounts when an IAR ended his or her association with Regal and the client accounts remained at Regal. Instead, Regal's three owners developed an informal procedure whereby all three owners were designated as the IARs for those client accounts, and the accounts were classified as house accounts. The owners' understanding and practice was that Kailunas and Yarch would share responsibility for managing these accounts. Kailunas and Yarch each received a share of the advisory fees charged to house accounts in proportion to their ownership interest in the firm. Therefore, Kailunas had an 80% interest in the fees Regal paid out on house accounts and Yarch had an 18% interest. Beginning in 2019, Kailunas and Yarch split the fees equally.

10. Between July 2015 and April 2021, Regal classified approximately 250 accounts as house accounts, and Kailunas and Yarch received compensation from the advisory fees charged to some of those accounts. These house accounts received varying levels of advisory services from Kailunas and Yarch, ranging from regular account reviews and contact with clients to no account reviews or client contact over a number of years. Regal continued to charge advisory fees on all house accounts, regardless of the services provided.

11. For approximately 81 of the house accounts, Regal did not provide advisory services, despite its continuous receipt of advisory fees for the accounts. Most of these house accounts were invested in either Regalfolios or Third-Party Portfolios. Accordingly, these clients continued to receive portfolio management services, but failed to receive regular account monitoring by Kailunas and Yarch to determine whether the selected portfolio remained consistent with clients' investment objectives and goals.

12. In many instances, Regal failed to notify clients that their original IAR had left Regal, or that Kailunas and Yarch had been assigned as their new IARs. In fact, some clients were not contacted by anyone at Regal after their original IAR had left the firm.

13. For example, in 2014, the IAR for Client A left Regal to work with a different investment firm. Pursuant to the agreement between Regal and that IAR, Regal had shared 85% of the advisory fees Client A paid with the IAR. After the IAR left in 2014, Kailunas and Yarch were assigned as IARs of record for Client A. From the departure of Client A's IAR until 2017, when Client A closed the account with Regal, Client A paid more than \$7,600 in advisory fees to Regal, and Kailunas and Yarch each received a portion of those advisory fees. No one at Regal provided Client A with advisory services during this period. For example, no one from Regal ever contacted Client A after the departure of Client A's IAR, and there is no indication anyone at Regal monitored or conducted periodic reviews of Client A's account.

14. In November 2019, Regal adopted a policy that required it to send a notification letter to clients that remained at Regal more than 90 days after the departure of their IAR, and adopted a written policy not to charge clients during the 90-day transition period. The letter would notify clients about the departure of their IAR and provide the client with options for their account, including the option to be managed as a house account. However, even after Regal adopted this new policy, Regal failed to notify clients about the departure of one IAR until six months after his termination, sent notifications to clients of another IAR nearly eleven months after his departure, and delayed nearly a year in sending notifications to clients of a third IAR who left Regal.

Regal's Undisclosed Conflicts of Interest Concerning Portfolios Managed by Durand

15. As discussed above, Regal offered its clients the option to invest their assets in portfolios managed by one of several money managers. In these instances, Regal paid the portfolio management fee portion of the client's fees to the money manager. Durand was one of the money managers whose services Regal offered to clients. Regal, Kailunas and Yarch recommended the Durand portfolios to some of their advisory clients.

16. Durand offered two proprietary model portfolios to Regal's clients. The portfolio manager for Durand was also an IAR of Regal, and he presented his model portfolios to other Regal IARs so that they would recommend the portfolios to their clients. Durand's portfolio manager did not have contact with, or recommend the Durand portfolios to, these Regal IARs' advisory clients.

17. From at least July 2015 through July 2019, Regal created and provided its clients with marketing materials and investor updates that described Durand's services and investment strategy. According to those materials, Durand was "independent of Regal Investment Advisors." However, Durand was not independent from Regal. In fact, Durand's majority owner was a Regal IAR and 100% of Durand's revenue came from Regal clients, who were the sole users of Durand's portfolio management services. From July 2015 to July 2021, Durand received portfolio management fees from Regal advisory clients.

18. In addition, Regal and its owners had significant financial interests in Durand. In particular, between October 2012 and March 2015, Kailunas owned a 10% interest in Durand. In March 2015, Kailunas transferred his 10% interest in Durand to Regal. In January 2019, Regal Holdings of America, an entity owned by Kailunas and Yarch, acquired the majority owner's 90% stake in Durand.

19. Regal also shared in the portfolio management fees Durand earned from Regal clients. Beginning in 2013, Regal and Durand had a fee-sharing arrangement by which Regal received a minimum of 10% of Durand's portfolio management fees, with the potential for higher percentages based on agreed-upon thresholds of the total portfolio management fees Durand earned from Regal clients. In exchange for a share of the fees, Regal marketed and offered Durand's services to its clients. Pursuant to this arrangement, from July 2015 through July 2021, Regal retained a portion of Durand's portfolio management fees.

20. These ownership interests and the fee-sharing arrangement created a conflict of interest for Regal, Kailunas, and Yarch because they received a portion of the portfolio management fees when Regal clients selected Durand as the portfolio manager. They also benefited from Durand's revenue through their indirect ownership interests in Durand.

Disclosure Failures

21. Since 2012, Regal failed to disclose to clients, in its Form ADV or otherwise, its affiliation with Durand and the associated conflict of interest. To the contrary, until January 2019, Regal created and disseminated Durand investor updates and other Durand marketing materials to current and prospective clients that stated Durand was independent of Regal. These statements were misleading because, while Durand was not controlled by Regal and made investment decisions independent of Regal, Durand was affiliated with Regal through Regal's ownership interest and Regal also had an interest in Durand's revenues through its fee-sharing arrangement. Beginning in July 2019, after Regal Holdings acquired a 90% stake in Durand, Durand's investor updates and marketing materials stated that Durand was an affiliate of Regal.

22. As an investment adviser, Regal was obligated to disclose all material facts to its advisory clients, including any conflicts of interest between itself or its associated persons and its

clients that could affect Regal's advice to its clients. To meet this fiduciary obligation, Regal was required to provide its advisory clients with full and fair disclosure that was sufficiently specific so that they could understand the conflicts of interest concerning Regal's advice and have an informed basis on which to consent to or reject the conflicts. However, Regal failed to disclose the conflicts of interest associated with recommending Durand's portfolio management services to Regal's clients.

Compliance Failures

23. Since at least July 2015, Regal failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with handling of account transitions of departing IARs, review and management of client accounts, and disclosure of all conflicts of interest. Regal's compliance manual designated Yarch with implementing Regal's compliance program as well as monitoring and updating Regal's Form ADV disclosures. In November 2019, Regal adopted policies and procedures concerning the handling of account transitions, but did not consistently implement the client notification procedure.

Violations

24. As a result of the conduct described above, Respondents willfully¹ 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.*

25. As a result of the conduct described above, Regal willfully violated, and Yarch caused Regal's violations of, Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

¹ "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act and 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." *Tagerv. 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).

Remedial Efforts

26. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent Regal.

Disgorgement

27. The disgorgement and prejudgment interest ordered in paragraph IV.H. is consistent with equitable principles, does not exceed Respondent Regal's net profits from its violations, and will be distributed to harmed advisory clients to the extent feasible. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to advisory clients may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Undertakings

28. Notice to Advisory Clients. Within thirty (30) days of the entry of this Order, Respondent Regal shall notify affected advisory clients (i.e., those former and current clients who were financially harmed during each relevant period by the practices discussed above and/or who invested through Durand (hereinafter, "affected advisory clients") of the settlement terms of this Order by sending a copy of this Order to each affected advisory client via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

29. Disclosure Documents. Within 30 days of the entry of this Order, Respondent Regal shall review and correct as necessary all relevant disclosure documents concerning Durand.

30. Certificate of Compliance. Respondent Regal shall certify, in writing, compliance with the undertakings set forth in paragraphs 28 and 29 above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent Regal agrees to provide such evidence. The certification and supporting material shall be submitted to Jeffrey A. Shank, Assistant Regional Director, Securities and Exchange Commission, 175 W. Jackson Blvd. Suite 1450, Chicago, IL 60604, with a copy to the Office of Chief Counsel of the Enforcement Division, 100 F. Street NE, Washington, DC 20549, no later than sixty (60) days from the completion of each of the undertakings.

31. Deadlines. The staff of the Commission may extend any of the procedural dates set forth in paragraphs 28 to 30 for good cause shown. The procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday the next business day shall be considered to be the last day.

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 Section 15(b) of the Exchange Act and Sections 203(e), 203(f), and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Regal 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)-7 promulgated thereunder.

B. Respondents Kailunas and Yarch shall cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act, and Yarch shall cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

C. Respondent Yarch shall be, and hereby is, subject to the following limitations on his activities:

- i. Respondent Yarch shall not act in a chief compliance officer capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.
- ii. Respondent Yarch may apply to act in such a chief compliance officer capacity after three years to the appropriate self-regulatory organization, or if there is none, to the Commission.

D. Any application by Respondent Yarch to act in such a chief compliance officer capacity will be subject to the applicable laws and regulations governing the reentry process, and permission to act in such a compliance 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 Respondent Yarch, in any action brought by Commission; (b) any disgorgement amounts ordered against Respondent Yarch 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.

E. Respondents Regal, Kailunas, and Yarch are censured.

F. Respondents shall pay disgorgement, prejudgment interest, and civil penalties as follows:

- (i) Respondent Kailunas shall pay a civil penalty of \$50,000, consistent with the provisions of this Subsection F. Respondent Yarch shall pay a civil penalty of \$50,000, consistent with the provisions of this Subsection F. Respondent Regal shall pay disgorgement of \$595,899.59, prejudgment interest of \$100,875, and a civil penalty of \$150,000 (all payments by Respondents pursuant to this paragraph shall constitute the “Fair Fund”), consistent with the provisions of this Subsection F.
- (ii) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, prejudgment interest, and penalties referenced in paragraph (i) above, for distribution to affected advisory clients. 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.
- (iii) Within ten (10) days of the entry of this Order, Respondent Kailunas shall deposit \$50,000, and Respondent Yarch shall deposit \$50,000, into an escrow account (“Escrow Account”) established by Respondent Regal at a financial institution not unacceptable to the Commission staff, and Respondents Kailunas and Yarch shall provide evidence of such deposits in a form acceptable to the Commission staff. The account holding the assets of the Fair Fund shall bear the name and the taxpayer identification number of the Fair Fund. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.
- (iv) Respondent Regal’s payment of the disgorgement, prejudgment interest, and civil money penalty shall be made in the following installments: (1) \$282,258.19 shall be paid within 10 days of the entry of this Order; (2) \$282,258.20 shall be paid within 180 days of the entry of this Order; and (3) \$282,258.20 shall be paid within 360 days of the entry of this Order. Respondent Regal shall deposit these installments into the Escrow Account, and Respondent Regal shall provide evidence of such deposit in a form

acceptable to the Commission staff. Payments shall be applied first to post-order interest, which accrues pursuant to SEC Rule of Practice 600 and/or 31 U.S.C. § 3717. Prior to making the final installment set forth herein, Respondent Regal shall contact the staff of the Commission for the amount due. If Respondent Regal 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.

- (v) Respondent Regal shall be responsible for administering the Fair Fund and may hire a professional at its own cost to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondent Regal and shall not be paid out of the Fair Fund.
- (vi) Respondent Regal shall pay from the Fair Fund to each affected advisory client an amount representing: (1) the advisory fees the affected advisory client paid since July 2015 for which the affected advisory client was not receiving advisory services; (2) a portion of the fees clients paid on assets managed by Durand; and (3) reasonable interest to be paid on such amounts. All calculations in accordance with this paragraph (the "Calculation") shall be submitted to, reviewed, and approved by the Commission staff. No portion of the Fair Fund shall be paid to any affected advisory client account in which Respondents, or any of Respondent Regal's current or former officers or directors, has a financial interest.
- (vii) Respondent Regal shall, within ninety (90) days of the entry of this Order, submit a proposed disbursement calculation ("Calculation") to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondent Regal shall make itself available, and shall require any third parties or professionals retained by Respondent Regal to assist in formulating the methodology for its Calculation and/or administration of the distribution to be 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. Respondent Regal also shall provide 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 Respondent Regal's proposed Calculation or any of its information or supporting documentation, Respondent Regal 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 the Commission staff notifies Respondent Regal of the

objection. The revised Calculation shall be subject to all of the provisions of this Subsection F.

- (viii) Respondent Regal shall, within thirty (30) days of the written approval of the Calculation by the Commission staff, submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected advisory client for the initial distribution. The Payment File should identify, at a minimum: (1) the name of each affected advisory client; (2) the net amount of the payment to be made, less any tax withholding; (3) the amount of any de minimis threshold to be applied; and (4) the amount of reasonable interest to be paid, if applicable. Within thirty (30) days of making its second and third payments as described in paragraph (iv), Respondent Regal shall submit a new Payment File for review and acceptance of the Commission staff before distribution of each of the remaining two payment installments.
- (ix) Respondent Regal shall disburse all amounts payable to affected advisory clients within ninety (90) days of the date the Commission staff approves each of the Payment Files, unless such time period is extended as provided in paragraph (xiii) of this Subsection F. Respondent Regal shall notify the Commission staff of the date[s] and the amount paid in the initial distribution.
- (x) If Respondent Regal is unable to distribute any portion of the Fair Fund, including an inability to locate an affected advisory client or a beneficial owner of an affected investment account or any other factors beyond Respondent Regal's control, Respondent Regal shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury subject to Section 21F(g)(3) of the Exchange Act once the distribution of funds is complete and before the final accounting provided for in paragraph (xii) of this Subsection F is submitted to the Commission staff. Any such payment must be made in one of the following ways:
 - a. Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
 - b. 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
 - c. 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 Regal, Kailunas, or Yarch as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Jeffrey A. Shank, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 1450, Chicago, IL 60604.

- (xi) 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. Respondent Regal agrees to be responsible for all tax compliance responsibilities associated with the Fair Fund’s status as a QSF. These responsibilities involve reporting and paying requirements of the Fund, including but not limited to: (1) tax returns for the Fair Fund; (2) information return reporting regarding payments to affected advisory clients, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act. Respondent Regal may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondent Regal and shall not be paid out of the Fair Fund.
- (xii) Within one hundred fifty (150) days after Respondent Regal completes the disbursement of all amounts payable to affected advisory clients, Respondent Regal shall return all undisbursed funds to the Commission pursuant to the instruction set forth in this Subsection F. Respondent Regal shall 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 include, but not be limited to: (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts 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 Respondent Regal has made payments from the Fair Fund to affected advisory clients in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Respondent Regal and the file number of these proceedings to Jeffrey A. Shank, Assistant Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604, or such other

address as the Commission staff may provide. Respondent Regal 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.

- (xiii) The Commission staff may extend any of the procedural dates set forth in this Subsection F 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.

G. Respondent Regal shall comply with the undertakings enumerated in Section III, paragraphs 28 to 30 above.

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 Respondents, 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 Respondents 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