

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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SUSAN KOZA, Individually and on Behalf)	Index No. 655297/2020
of all Others Similarly Situated,)	
)	
Plaintiff,)	
)	
v.)	
)	
MUTUAL FUND SERIES TRUST,)	
ALPHACENTRIC ADVISORS LLC,)	
NORTHERN LIGHTS DISTRIBUTORS,)	
LLC, GARRISON POINT CAPITAL, LLC,)	
JERRY SZILAGYI, BERT PARISER,)	
TOBIAS CALDWELL, TIBERIU WEISZ,)	
FREDRICK SCHMIDT, and ERIK)	
NAVILOFF,)	
)	
Defendants.)	
_____)	

AMENDED COMPLAINT FOR VIOLATIONS OF THE SECURITIES ACT OF 1933

Plaintiff Susan Koza (“Plaintiff”), individually and on behalf of all others similarly situated, through her undersigned attorneys, alleges the following based upon personal knowledge, as to Plaintiff and Plaintiff’s own acts, and upon information and belief, as to all other matters, based on the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of filings with the U.S. Securities and Exchange Commission (“SEC”) submitted regarding the AlphaCentric Income Opportunities Fund (the “Fund”), as well as media and analyst reports about the Fund and Fund press releases. Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein.

SUMMARY OF THE ACTION

1. This is an action by and on behalf of persons who purchased shares of AlphaCentric Income Opportunities Fund (Ticker Symbols: IOFAX (Class A), IOFCX (Class C), and IOFIX

(Class I)) during the period of October 14, 2017 through March 22, 2020, inclusive (the “Class Period”), pursuant and/or traceable to one of the Fund’s Registration Statements or Prospectuses.

2. Plaintiff alleges that the Fund, its investment advisors, underwriter, trustees, officers, and other Defendants violated the Securities Act of 1933 (“Securities Act”) by registering, offering, and selling shares of the Fund pursuant to false and misleading registration statements and prospectuses. The action asserts strict-liability, non-fraud claims under §§11, 12, and 15 of the Securities Act, and is seeking to pursue remedies under the Securities Act.

3. This case concerns a massive (almost \$2 billion) cratering of an open-end mutual fund affiliated with well-known and longtime market participant Defendant Jerry Szilagyi. The AlphaCentric Income Opportunities Fund portrayed itself as a fund devoted to “capital preservation.” The Offering Materials (defined below) for the continuous offering of the Fund’s shares during the Class Period, however, negligently misrepresented and omitted material information about the Fund and its assets. In fact, the AlphaCentric Income Opportunities Fund invested heavily (at times almost exclusively) in highly illiquid and distressed securities. The Fund thus violated SEC rules and was not appropriate for an open-end fund, but was managed more like a hedge fund.

4. Specifically, the Fund was sold with a low minimum entry-level dollar amount to investors looking for capital preservation and the ability to redeem at will. Throughout the Class Period, investors were told that the Fund would not invest in more than 15% illiquid securities. Indeed, SEC rules require that no more than 15% of a fund’s portfolio be invested in illiquid securities and that a fund maintain a level of liquidity that is *appropriate under the circumstances*. Here, the Fund repeatedly represented that its amount of illiquid securities actually totaled less than one half of one percent.

5. Liquidity is of vital importance to an open-end mutual fund for many reasons. First, it ensures that when shareholders seek to redeem their shares, the fund will have enough liquid assets to satisfy the redemption requests. Additionally, liquidity (or illiquidity) weighs into the valuation of a fund's assets in general as illiquid assets are often those where the price cannot be determined by reviewing the market activity.

6. During the Class Period, despite misstatements to the contrary, the Fund was heavily invested in illiquid and extremely risky assets. The vast majority of the assets making up the Fund were so illiquid that they have no trading history at all. Indeed, at times the Fund was comprised of over 75% legacy non-agency mortgage backed securities. Furthermore, this 75% were largely also in the first or second loss position and were the "Alt-A" and "subprime" loans that gained notoriety during the 2008 financial crisis.

7. These assets were anything but liquid particularly because prior to being able to be sold, they would have required a battery of tests to ascertain value. Those tests could not have been undertaken in a timely and orderly fashion to meet any large increase in redemption requests. At the same time, Defendants were placing subjective and self-serving values on the Fund's assets and exhibiting a lack of oversight of the Fund. Therefore, unbeknownst to investors, the Fund was effectively a ticking time bomb. As it was packed with illiquid assets and lacked cash, if a flood of redemptions were to come in, the Fund did not have enough liquid assets to meet them.

8. In early 2020, the signs were clear that there was market turmoil, yet Defendants' risky and negligent behavior continued. In fact, going into March 2020, the Fund's holdings were made up of approximately 70% legacy Non-Agency mortgage-backed securities, 18% collateralized mortgage obligations, 6% non-agency commercial mortgage-backed securities and only 6% cash. It was thus heavily slanted to high risk assets which have been shown to perform

especially poorly when there is market dislocation. Given this make up, the Fund could not survive the early 2020 market dislocation intact.

9. On Sunday, March 22, 2020, the Fund attempted to sell over \$1 billion of securities in a fire sale to meet redemptions, almost a quarter of the Fund. The Fund experienced a sudden, dramatic drop in the value of its shares, with over \$1.8 billion of Fund value evaporating in a matter of days. In less than a week, between March 17 and March 23, 2020, the NAV for the Fund's share class plummeted from \$12.32 per share to \$7.65 per share, a decline of nearly 38%. The crash showed that the Fund was not appropriately liquid, protected from market stress and ready to address redemptions as they were sought.

10. The drop in the Fund's value was not caused by general economic decline but, rather, by Defendants' risky failure to adhere to the Fund's stated investment objectives and risky amassing of illiquid securities. These failures left the Fund extremely vulnerable to the inevitable financial cycles. Having experienced the 2008 market crash (and then having invested in precisely those bonds that were a "legacy" from that period), the 2020 disruptions was not unforeseeable and, had Defendants followed the investment guidelines and SEC mandates, the Fund would have been protected from, rather than vulnerable to, such an event.

JURISDICTION AND VENUE

11. The claims asserted herein arise under and pursuant to §§11, 12(a)(2), and 15 of the Securities Act, 15 U.S.C. §§77k, 77i, 77o.

12. This Court has subject matter jurisdiction over this action under the New York Constitution, Article VI, §7(a), and §22 of the Securities Act, 15 U.S.C. §77v. Removal is barred by §22 of the Securities Act.

13. This Court has personal jurisdiction under Rules 301 and 302(a) of the New York Civil Practice Law and Rules ("CPLR") because the Offering Materials were prepared and

reviewed, in part, in New York, and because Defendants and their agents solicited the subject securities and transmitted the Offering Materials to investors in New York.

14. This Court has personal jurisdiction over each Defendant named herein because each conducted business in New York, including the drafting of the Offering Materials and soliciting investors in New York. In addition, certain Defendants, including the Fund's Advisor (defined below), reside in New York.

15. Venue is proper pursuant to CPLR 503(a) because a substantial part of the events or omissions giving rise to the claims occurred in this county.

PARTIES

A. Plaintiff

16. Plaintiff Susan Koza purchased shares of the Fund during the Class Period pursuant or traceable to the Registration Statements and Prospectuses at issue in this Complaint and has been damaged thereby.

B. Defendants

17. Defendant Mutual Fund Series Trust (the "Trust") is the Fund's registrant and an open-end management investment company, registered under the Investment Company Act of 1940 (the "ICA"), that consists of different investment series, including the Fund. The Fund is a mutual fund within the Trust series of mutual funds. It offers three share classes to investors with the following ticker symbols (IOFAX) (Class A), IOFCX (Class C), and IOFIX (Class I).

18. The Trust is organized under the laws of Ohio pursuant to an Agreement and Declaration of Trust dated February 27, 2006. The Trust is headquartered at 4020 S. 147th Street, Suite 2, Omaha, Nebraska 68137-5409. The Trust resides in and/or transacts business in New York. The Trust is overseen by a Board of Trustees (the "Board").

19. Defendant AlphaCentric Advisors LLC (“AlphaCentric”) is and was the Fund’s investment advisor (the “Advisor”) at all relevant times. The Advisor was retained by the Fund under a Management Agreement to act as the Fund’s Advisor, subject to the oversight of the Board. The Advisor is a Delaware limited liability company with its address at 53 Palmeras Street, Suite 601, San Juan, Puerto Rico 00901 (as of January 2020; previously, 36 North New York Avenue, Huntington, New York 11743). The Advisor resides in and/or transacts business in New York. AlphaCentric is controlled by Jerry Szilagyi and is under common control with Catalyst Capital Advisors LLC and Rational Advisors, Inc., the investment advisers of other funds in the same group of investment companies also known as a “fund complex.” Management of the Fund (as well as others in the fund complex) is the Advisor’s primary business. The Advisor carries out its duties, subject to the policies established by the Fund’s Board, under a Management Agreement. According to the 2017 Registration Statement, “the advisor manages the investment of the assets of the applicable Fund in conformity with the investment objectives and policies of that Fund. It is the responsibility of the advisor to make investment decisions for the applicable Fund and to provide continuous supervision of the investment portfolios of the Fund.” As compensation for its services, the Advisor receives a management fee.

20. Garrison Point Capital, LLC (“Garrison Point”) is an investment advisory firm founded in 2012 and registered as an investment advisor with the SEC on October 2, 2012. Garrison Point was retained to act as the investment sub-advisor to the Fund under an Investment Sub-Advisory Agreement (“Garrison Point Sub-Advisory Agreement”) with the Advisor. The Board of Trustees delegated responsibilities for decisions regarding proxy voting for securities held by the Fund to Garrison Point. The allocation of the Fund’s investments in these various asset classes depends on the view of the Fund’s investment sub-advisor, Garrison Point as to which asset

classes offer the best risk-adjusted values in the marketplace at a given time. Garrison Point is responsible for selecting the securities for investment. For the fiscal year ended March 31, 2017 Garrison earned \$1,269,265 for its work on the Fund. In the 2018 Registration Statement, the fee payment system changed to be “50% of the net management fees that the Advisor receives from the Income Opportunities Fund.” The fees were 1.50% of each class.

21. Northern Lights Distributors LLC (“Northern Lights” or the “Distributor”) is and was the principal underwriter and national distributor for the shares of the Fund pursuant to an Underwriting Agreement with the Trust. The Distributor also served as the Trust’s agent for the purpose of the continuous public offering of the Fund’s shares. The Distributor is a Nebraska limited liability company with its headquarters located in Omaha, Nebraska. Northern Lights transacts business in New York.

22. Defendant Jerry Szilagyi (“Szilagyi”) is and was a Trustee for the Fund since June 2006 and was the President and Chairman of the Board of the Trust since February 2012 and remained in these positions at all relevant times. He signed each Registration Statement effective during the Class Period. He also signed the certifications for the Form N-Q certifying he was “responsible for establishing and maintaining disclosure controls and procedures.” Szilagyi also is and was a member of AlphaCentric Advisors LLC at all relevant times. He was also, at relevant times, President of MFund Services LLC, which provides management and administrative services to the Fund. MFund further provided “chief compliance officer services to the Funds.” Since 2006, Szilagyi has also been Chief Executive Officer of Catalyst Capital Advisors LLC (“Catalyst”), the investment advisor to certain other series of the Trust. He has also been a director for Variable Insurance Trust since 2010, which was a part of the “Fund Complex.” Szilagyi resides in and/or transacts business in New York. He has over 30 years’ experience working in various

management, consultant, and investment banking positions in the asset management industry since 1983.

23. Defendant Dr. Bert Pariser (“Pariser”) is and was a Trustee of the Board since May 2007 and remained as a Trustee at all relevant times. He reportedly served on the Board’s audit committee during the Class Period. He signed each Registration Statement effective during the Class Period. He has also been a director for Variable Insurance Trust since 2010, which was a part of the “Fund Complex.” Pariser resides in and/or transacts business in New York.

24. Defendant Tobias Caldwell (“Caldwell”) is and was a Trustee of the Board since June 2006 and remained as a Trustee at all relevant times. He signed each Registration Statement effective during the Class Period. Effective July 2, 2015, Mr. Caldwell was appointed by the Board as the Lead Independent Trustee. He reportedly served on the Board’s audit committee during the Class Period. He has also been a director for Variable Insurance Trust since 2010, which was a part of the “Fund Complex.” Caldwell resides in and/or transacts business in New York.

25. Defendant Tiberiu Weisz (“Weisz”) is and was a Trustee of the Board since June 2006 and remained as a Trustee at all relevant times. He signed each Registration Statement effective during the Class Period. He reportedly served on the Board’s audit committee during the Class Period. He has also been a director for Variable Insurance Trust since 2010, which was a part of the “Fund Complex.” Weisz resides in and/or transacts business in New York.

26. Throughout the Class Period, Independent Trustees, Caldwell, Weisz, and Pariser were paid a quarterly retainer and received compensation for each special in-person meeting attended. Szilagyi was compensated by the MFund for administrative support services to the Trust. MFund, of which Szilagyi was a controlling member, was paid, \$130,789, \$439,003 and \$713,779

in 2017, 2018 and 2019 respectively for administration of the Fund. MFund was also paid \$17,714, \$42,330 and \$74,360 in 2017, 2018 and 2019 respectively for “compliance services.” This Complaint refers to Szilagyi, Pariser, Caldwell, and Weisz as the “Trustee Defendants.”

27. Defendant Erik Naviloff (“Naviloff”) is and was Treasurer and Principal Financial Officer of the Trust since April 2012 and remained in those positions at all relevant times. He was a member of the Valuation Committee that worked with the Pricing Committee (renamed the Fair Value Committee in 2018) which was “responsible for the valuation and revaluation of any portfolio investment for which market quotations or sale prices are not readily available.” He signed each Registration Statement effective during the Class Period. He also signed the certifications for the Form N-Q certifying he was “responsible for establishing and maintaining disclosure controls and procedures.” Naviloff is also the Vice President, Fund Administration, of Gemini Fund Services, LLC (“GFS”). GFS serves as administrator, fund accountant, and transfer agent for the Fund pursuant to a Fund Services Agreement. GFS is an affiliate of the Distributor. Naviloff resides in and/or transacts business in New York.

28. Fredrick Schmidt (“Schmidt”) was Chief Compliance Officer of the Fund since May 2015, and remained in that position at all relevant times. He was a member of the Valuation Committee that worked with the Pricing Committee (renamed the Fair Value Committee in 2018) which was “responsible for the valuation and revaluation of any portfolio investment for which market quotations or sale prices are not readily available.” At relevant times, he was Director of MFund Services LLC, which provides management and administrative services to the Fund. According to the 2017 Registration statement MFund provided “chief compliance officer services to the Funds.”

29. This Complaint refers to the Defendants Naviloff and Schmidt as the “Individual Defendants.”

SUBSTANTIVE ALLEGATIONS

A. Structure of Mutual Funds in General

30. A mutual fund pools investor funds to invest in securities, assets, stocks or bonds, or a combination of these securities and assets. In particular, an open-end fund sells shares on a continuous basis, with shares purchased from and redeemed by the mutual fund. Here, the Fund is an open-end, SEC registered mutual fund, registered under the ICA.

31. The purpose of an open-end mutual fund is to provide investors with a safe, easy, low-cost way to pool their money with other investors to benefit from professional investment management, diversification, and liquidity. The SEC explains that the features important for an investor considering a mutual fund are that: (i) a fund is managed by SEC registered advisors; (ii) funds diversify their investments “across a wide range of companies or industry sectors [to] help lower risk if a company or sector fails;” (iii) there is a low minimum investment required for investors; and (iv) there is liquidity and trading convenience because investors can “readily redeem their shares at the next calculated NAV – minus any fees and charges assessed on redemption – on any business day.”¹

32. In particular, the low investment amount required by mutual funds allows individual investors to invest in assets they may be priced out of in other strategies. As the SEC explained, “[s]ome mutual funds accommodate investors who don’t have a lot of money to invest by setting relatively low dollar amounts for the initial purchase, subsequent monthly purchases, or

¹ Mutual Funds and ETFs, A Guide for Investors, SEC Pub. 182 (12/16), p. 8-9, *available at*: <https://www.sec.gov/investor/pubs/sec-guide-to-mutual-funds.pdf> (last visited February 23, 2021).

both.”² Mutual funds have a high level of retail investors. As former SEC Commissioner Kara Stein explained, “[n]early one out of three Americans - over 90 million people - put their investment dollars to work in such registered funds.”³

33. A mutual fund needs to provide the daily Net Asset Value (“NAV”) which is “the per-share value of the mutual fund’s . . . assets minus its liabilities” at the close of trading.⁴ Unlike common stocks and closed-end funds, the prices of shares in open-end funds are not supposed to be impacted by ordinary market forces of supply and demand of a fund’s shares because purchases and sales of shares are made directly with a fund instead of with other investors. However, the market can affect the NAV as the underlying assets’ value may fluctuate with the liquidity of the market for which the underlying assets are traded. It is a fund’s responsibility to update the NAV with the changes in value of the portfolio assets.

34. The ability to redeem the shares at any time is central to the mutual fund structure. On its website, the SEC lists the ability of investors to readily redeem their shares as one of the “defining features” of mutual funds. *Investment Company Liquidity Risk Management Programs*, SEC Release Nos. 33-10233; IC-32315, 17 CFR Parts 210,270, 274 (Oct. 13, 2016). It is considered a “hallmark” of open-end mutual funds “that they must be able to convert some portion of their portfolio holdings into cash on a frequent basis because they issue redeemable securities.” *Id.* at 13-14. In fact, “many investors expect to receive redemption proceeds in less than seven days as some mutual funds represent in their prospectuses that they will generally pay redemption proceeds on a next-business day basis.” *Id.* at 14-15. Further, “[g]iven the statutory and regulatory

² *Id.* at 8.

³ See Commissioner Kara M. Stein, *Mutual Funds – The Next 75 Years*, June 15, 2015, available at: <https://www.sec.gov/news/speech/mutual-funds-the-next-75-years-stein.html>.

⁴ *Mutual Funds and ETFs, A Guide for Investors*, SEC Pub. 182 (12/16) available at: <https://www.sec.gov/investor/pubs/sec-guide-to-mutual-funds.pdf>.

requirements for meeting redemption requests, as well as any potential for liability for representations made to investors regarding payment of redemption proceeds, a mutual fund must adequately manage the liquidity of its portfolio so that redemption requests can be satisfied in a timely manner.” *Id.* at 15.

35. The message from the SEC has been consistent in every forum. For example, Ms. Stein pointed out in a speech, how the retail investor relies on the principals of a liquid portfolio and the ability to meet redemptions:

A retail investor looks at a mutual fund and expects that he or she will be able to get money out of a fund very quickly if needed. *A retail investor is generally not performing cash flow analyses on mutual funds to test their true liquidity.*

This expectation comes from the Investment Company Act of 1940, which requires mutual funds to honor redemption requests within seven days of a shareholder request. In practice, as many of you have probably experienced, the redemption occurs much more quickly than that. In addition, Commission guidance only allows mutual funds to invest up to 15% of the fund’s assets in illiquid securities. *As a result of both of these requirements, retail investors assume that their investments in registered funds are fairly liquid and can be redeemed quickly if need be. This liquidity profile has been a foundational principle of the Investment Company Act since its inception.*⁵

[Emphasis added.]

36. Redemption ability is thus directly tied to liquidity. The SEC noted that “[d]aily redeemability is a defining feature of open-end management investment companies” such as mutual funds. *Open-End Fund Liquidity Risk Management Programs*, SEC Release Nos. 33-9922; IC-31835, 2015 SEC LEXIS 3879 (Sept. 22, 2015) (“SEC Release No. 33-9922”). “When the Investment Company Act was enacted, it was understood that *redeemability meant that an open-end fund had to have a liquid portfolio.*” SEC Release No. 33-10233. “As millions of Americans have come to rely on open-end funds as an investment vehicle of choice, the role of fund liquidity

⁵ See Commissioner Kara M. Stein, *Mutual Funds – The Next 75 Years*, June 15, 2015, available at: <https://www.sec.gov/news/speech/mutual-funds-the-next-75-years-stein.html>.

management in reducing the risk that a fund will be unable to meet its obligations to redeeming shareholders while also minimizing the impact of those redemptions on the fund (i.e., mitigating investor dilution) is becoming more important than ever.” SEC Release No. 33-9922. As stated in SEC Release No. 33-10233, “the extent a fund’s portfolio is made up of a large amount of illiquid or less liquid securities, the fund may face difficulties meeting shareholder redemption requests while at the same time protecting the value of the shares of existing shareholders from dilution.” SEC Release No. 33-10233 at 23. Having limited liquidity also affects a portfolio manager’s ability to “defensively reposition the fund in anticipation of shifting or volatile markets” or “limited liquidity also could even result in the fund straying from its investment objective.” *Id.* at 24.

37. Without appropriate levels of liquidity and accurate reporting of the NAV, shareholder redemptions could force funds to sell assets at below reported prices and/or force the fund to sell its highest value assets which are frequently the most liquid. The investor seeking redemption will receive the price per share as reported by the NAV on the end of the day they seek redemption. If a fund fails to sell the assets for the prices presented in NAV and raise the money needed for redemptions, then a fund will have to sell more assets and higher value assets to cover the cost of redemptions. In other words, if multiple redemptions come in, a fund will first sell off its most liquid assets. If this alone does not meet the amount of redemptions, a fund that is not sufficiently liquid may be left with a number of illiquid and hard-to-sell assets that it must sell (to satisfy redemptions) at a “fire sale” price or below NAV prices. The sale of the highest value assets would negatively impact a fund’s NAV and further reduce the value of the shares of non-selling shareholders.

38. Therefore, having an accurate NAV becomes central to protecting a fund’s ability to redeem quickly and not gut a fund for the non-redeeming investors. “If the net asset value of

a mutual fund is not accurate, purchasing or redeeming shareholders may pay or receive too little or too much for their shares, and the interests of remaining shareholders may be overvalued or diluted.” *Revisions of Guidelines to Form N-1A*, 1992 SEC LEXIS 1083, Rel. No. 33-6927; 1C-18612 (Mar. 12, 1992).

39. And identifying which assets are illiquid and therefore hard to sell is likewise central to protecting the value of a fund if there are increased redemptions. Because of these risks for shareholders, the SEC has clearly and specifically defined the percentage of illiquid assets to be held in a portfolio. To ensure redemptions are uninterrupted, “long-standing [SEC] guidelines contain a liquidity standard that generally limits an open-end fund’s aggregate holdings of ‘illiquid assets’ to *no more than 15% of the fund’s net assets*.” SEC Release No. 33-10233 at 1. 17 CFR § 270.22e-4, under the ICA, similarly provides that a fund’s portfolio cannot hold more than 15% illiquid assets. Therefore, at least 85% of a fund’s assets must be considered “liquid.”

40. In order to maintain the proscribed level of liquidity, “a mutual fund must be able to value each portfolio security accurately” to compute the NAV daily. *Revisions of Guidelines to Form N-1A*, 1992 SEC LEXIS 1083, Rel. No. 33-6927; 1C-18612 (Mar. 12, 1992). The SEC defines illiquid securities as assets that “cannot be sold or disposed of in the ordinary course of business within seven days at approximately the value at which a fund has valued the investment.” SEC Release No. 33-10233 at 17-18. Funds are required to classify each investment into one of four liquidity categories: highly liquid investments, moderately liquid investments, less liquid investments, and illiquid investments. The review of the “portfolio investments’ classifications” must occur “at least monthly in connection with reporting the liquidity classification for each portfolio investment on Form N-PORT . . . and more frequently if changes in relevant market, trading, and investment-specific considerations are reasonably

expected to materially affect one or more of its investments' classifications.” 17 CFR § 270.22e-4(b)(ii).

41. A fund can generally classify its portfolio investments by their asset class, however, “the fund must separately classify and review any investment within an asset class if the fund or its adviser has information about any market, trading, or investment-specific considerations that are reasonably expected to significantly affect the liquidity characteristics of that investment.” 17 CFR § 270.22e-4(b)(ii)(B). And a fund needs to consider if “trading varying portions of a position in a particular portfolio investment or asset class, in sizes that the fund would reasonably anticipate trading, is reasonably expected to significantly affect its liquidity.” So a fund needs to look at what it has for liquidity levels and anticipate what would happen to the asset class if part of the underlying assets were sold.

42. In addition to the 15% illiquid threshold, a fund is also required to maintain a level of portfolio liquidity that is “appropriate under the circumstances.” The adoption of the 15% guideline did not “relieve a fund from the requirements concerning valuation and the general responsibility to maintain a level of portfolio liquidity that is appropriate under the circumstances.” *Revisions of Guidelines to Form N-1A, 1992* SEC LEXIS 1083, Rel. No. 33-6927; 1C-18612 (Mar. 12, 1992). The SEC stated, in pertinent part, as follows:

If no market quotations for an illiquid security are available, the board of directors of the fund will be required to determine the fair value of the security. ***In addition, the Commission expects funds to monitor portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained.***

Id. [Emphasis added].

43. Further, mutual funds are expected to be closely monitored. For example, 17 CFR § 270.22e-4 also requires funds establish “liquidity risk management programs” that asses,

manage and review periodically a fund's liquidity risk, classify the liquidity of the portfolio, determine the "highly liquid investment minimum," limit illiquid investments and provide for board oversight. *Investment Company Liquidity Risk Management Program Rules: A Small Entity Compliance Guide*, available at <https://www.sec.gov/divisions/investment/guidance/secg-liquidity.htm>. The SEC provides that:

Each fund is required to classify each of the investments in its portfolio on at least a monthly basis. The classification is based on the number of days in which the fund reasonably expects the investment would be convertible to cash (or sold or disposed of) in current market conditions without significantly changing the market value of the investment, and the determination has to take into account the market depth of the investment. Funds are required to classify each investment into one of four liquidity categories: highly liquid investments, moderately liquid investments, less liquid investments, and illiquid investments.

Id.

44. The review of whether a fund's portfolio has more than 15% illiquid assets should be "at least monthly review." *Id.* If a fund has more than 15% illiquid assets, this needs to be reported to a board with a plan "to bring its illiquid investments back within the limit within a reasonable period of time." The plan will be reevaluated every 30 days if the illiquid investments remain over 15%. *Id.*

45. Board oversight includes a requirement "to review, at least annually, a written report on the adequacy of the program and the effectiveness of its implementation." *Id.*

46. "[T]o provide investors with increased protection regarding how liquidity in their open-end funds is managed," funds are required to disclose certain information relating to liquidity as well. SEC Release No. 33-10233. Under Form N-1A, a fund is required "to disclose information about the operation and effectiveness of their liquidity risk management program in their reports to shareholders." *Investment Company Liquidity Risk Management Program Rules: A Small Entity Compliance Guide*, available at [https://www.sec.gov/divisions/investment/guidance/secg-](https://www.sec.gov/divisions/investment/guidance/secg-liquidity.htm)

[liquidity.htm](#). Meanwhile, Form N-Port, “require(s) a fund to maintain in its records position-level liquidity classification information and information regarding a fund’s highly liquid investment minimum on a monthly basis.” *Id.* Further, if a fund’s holdings exceed the 15% threshold of its net assets it is required to confidentially notify the SEC within one business day through a Form N-LIQUID. *Id.*

47. The SEC also notes a fund, investment advisors and persons responsible for the sale of securities are exposed to potential liabilities under the securities laws. “Failure by a fund to maintain a sufficiently liquid portfolio or to otherwise manage liquidity risk calls into question the fund’s ability to fulfill the representations (explicit or implicit) made in its prospectus regarding its ability to meet its redemption obligations, as well as its status as an open-end fund.” Release No. 33-10233 at 21.

48. In sum, an investor in a mutual fund expects a fund to be appropriately liquid, to be exposed to limited risk through diversification of investments, to provide an investor the ability to readily redeem shares at the next calculated NAV, and to be appropriately managed.

49. By contrast, hedge funds do not provide as much protection to the investor because they are geared to high worth individual or institutional investors. They are not subject to the same liquidity requirements. Mutual funds offer retail investments at a low rate, compared to the riskier hedge funds that are pooled accounts offered privately to investors usually for a significant amount of minimum investment. Mutual funds can be offered to anyone, while hedge funds can only be offered to accredited investors defined by the SEC but usually including: high net worth individuals, banks, insurance companies, brokers, trusts and other institutional investors. Here, unknown to investors, the portfolio and liquidity of the Fund, as well as its redemption risks were more akin to the riskier hedge fund.

B. Structure of the AlphaCentric Income Opportunity Fund

50. Defendants marketed and sold shares of the Fund as a capital-preserving, income-generating investment tied to the non-agency mortgage market. According to the Fund's Offering Materials (defined herein), the Fund "prioritizes capital preservation, and favors undervalued investments that produce consistent returns in most interest rate environments." The Fund represented that it picked assets based on a number of factors such as, "collateral quality, duration, structure, excess interest, credit support, potential for greater upside and less downside capture, liquidity, and market conditions."

51. The Fund stated it primarily invested "in asset-backed fixed income securities, such as securities backed by credit card receivables, automobiles, aircraft, student loans, and agency and non-agency residential and commercial mortgages" listing an array of diverse assets that it could invest in. The investment strategy tasked sub-advisor Garrison Point with seeking and selecting securities with the "best risk/return opportunity" taking into account "collateral quality, duration, structure, excess interest, credit support, potential for greater upside and less downside capture, liquidity, and market conditions." The Fund was marketed as being able to hold over 25% of its investments in mortgage-backed securities ("MBS"), and has been heavily invested in non-agency residential MBS ("RMBS"), particularly "legacy" RMBS (mortgages issued before the 2008 financial crisis).

52. RMBS are debt-based securities, that are collateralized by mortgages on residential housing units. A mortgage servicer collects scheduled principal and interest from mortgagees and passes the payments through to security holders. Many RMBS in the early 2000's were made with very lax underwriting standards. In 2008, the US faced a financial crisis due to years of excessive risk taking by banks and a lapse in regulatory oversight in the residential housing mortgage industry. The billions of RMBS that were created in the early to mid-2000s, backed by mortgages

with poor underwriting, took catastrophic losses when the housing bubble burst. Many bondholders were large money center banks that were bailed out by the Federal Reserve and U.S. Treasury. This resulted in a mass disposal of what was left of the bonds that were created during the housing boom. Investors with capital were able to buy these bonds at very attractive prices and achieved high rates of return on them. These bonds are referred to as “legacy” RMBS.

53. The Fund was heavily invested in legacy non-agency RMBS assets that were not diversified and had high levels of illiquidity. The Fund’s portfolio contained a much higher level of illiquid assets than reported and certainly higher than the 15% limit.

54. As noted above, one of the features of a mutual fund that makes it attractive to individual investors is that the Fund has a low level entry price. Here, there was a “minimum initial investment in all share classes [of] \$2,500 for regular and IRA accounts, and \$100 for an automatic investment plan account.” Thereafter, the “minimum subsequent investment in all share classes of the Fund is \$100.”

55. The Fund had no-fee (free) redemptions, unless redeemed in the first 180 days (early withdrawal fee of 1%). Under the terms of the Fund, redemption is “typically expect[ed]” to “take up to five business days following the receipt of [the investor’s] redemption request” to pay the investor in cash or check. The redemptions were paid in “cash, cash equivalents, proceeds from the sale of Fund shares, any lines of credit, and then from the sale of portfolio securities.” If an investor decides to redeem its shares, it will be redeemed at the price of the end of day net asset value (NAV) on the day when the request is submitted. The shares could be purchased or redeemed on any day the NYSE was open. The redemption payment methods were to be used in regular and stressed market conditions.

56. To meet its redemption obligations, the Fund necessarily would need to sell the assets and securities in the Fund since it did not hold the cash necessary to pay significant redemptions. Because the Fund needs to sell assets within a short time, pricing all assets accurately is central to not sustain large losses with these transactions.

57. As noted above, the Fund was also required to maintain a level of portfolio liquidity that would allow the sale of assets at or near the NAV prices so there would not be massive losses with redemption requests. Again, the SEC defines illiquid securities as “any investment that the fund reasonably expects cannot be sold or disposed of in *current market conditions* in seven calendar days or less *without the sale or disposition significantly changing the market value of the investment.*” 17 CFR § 270.22e-4 [emphasis added.] Because liquid securities are easier to quickly sell, the Fund promised investors that it would hold only a small portion of its assets in illiquid securities. The Fund’s Registration Statements and Prospectuses issued and filed with the SEC during the Class Period continuously represented that the Fund would hold *no more than 15% of its assets in illiquid securities.*

58. In fact, during the Class Period, the portfolio was not diverse, was not mitigating risk and had amassed a risky portfolio that Defendants failed to manage appropriately. For example, as reported for December 2019, the Fund held 76 % in legacy non-agency mortgage backed securities. These bonds are not government-sponsored enterprises since they have often consisted of pools of borrowers who could not meet agency standards, and therefore are at a higher risk for default. Many of these non-agency loans were the “Alt-A” and “subprime” loans that gained notoriety in the 2008 financial crisis and these assets require a large amount of what is referred to as “credit work” to value. Indeed, in March 2020, the Financial Times reported that at

the end of 2019, “60 percent of the fund was invested in ‘legacy’ residential mortgage-backed securities (RMBS), which were first sold to investors before the last financial crisis began in 2008.”

59. Furthermore, the legacy bonds that the Fund held were mainly in a first or second loss position and had principal lockouts anywhere from five to 20 years. This means that if losses occur to a bond’s collateral, those in the “first loss position” take the loss first, and a second loss position second. Principal lockouts are limitations in which principal is not received until a set time, up to 20 years. In a stressed environment, these bonds do not trade without a significant price haircut, if they trade at all.

60. The Fund kept reporting that it was focused on diversification and mitigating risk while bringing investors reward. In March 2019 the Fund won an award from Thompson Reuters’ fund research service Lipper, because it had the highest consistent return out of the 260 funds in the category for the previous three years. Defendant Szilagyi, chief executive of AlphaCentric, explained “[w]e are committed to offering products that provide *diversification* and utilise unique investment strategies, while attempting to *mitigate risk*,” when he received the award.

61. The Fund was managed by industry leaders who had experience with analyzing and valuing complex portfolios in varying market conditions and preparing statements to investors and the SEC. Defendant Szilagyi has over 30 years’ experience working in various management, consultant, and investment banking positions in the asset management industry. He was in the market in 2006-2008 for the market crash directly related to the RMBS legacy assets held by the Fund. He also has been the focus of regulatory ire for material misstatements and issues concerning managing risk.

62. Most recently, Defendant Szilagyi and Catalyst recently settled for \$10 million with the SEC and Commodity Futures Trading Commission (“CFTC”) for misrepresentations to

investors “concerning its risk management procedures and the existence of stop loss measures and triggers to cap or otherwise limit losses which were inconsistent with CCA’s actual practices.” The SEC also found that the Portfolio Manager “failed to manage the Fund’s risks consistent with the Fund’s prospectus, which stated that CCA would “employ[]strict risk management procedures.” Finally, Defendant Szilagyi “failed to reasonably supervise” the Portfolio Manager in connection to risk management.⁶ And the CFTC complaint explained it was Szilagyi’s job to make sure the risk was managed as reported and the statements were accurate. “As the CEO of Catalyst at all relevant times, Szilagyi directly or indirectly controlled all aspects of Catalyst’s business, including the Fund. He had the power and authority to establish and implement a supervisory system designed to detect and prevent the violations described above.”⁷

C. The Fund Was Not Liquid

63. As noted above, Defendants assured investors that the Fund did not hold over 15% of illiquid assets. In fact, the Fund actually reported, in its Form N-Qs, certified by Defendants Szilagyi and Naviloff, amazingly low levels of illiquid securities -- less than one half of one percent. For example, Defendants stated that “[t]otal illiquid securities represents 0.12% of net

⁶ *In matter of Catalyst Capital Advisors and Jerry Szilagyi*, File No. 3-19674, Order, <https://www.sec.gov/litigation/admin/2020/ia-5436.pdf>.

⁷ See the CFTC Action, CFTC Docket No. 20-13 (Jan. 27, 2020), available at related link <https://www.cftc.gov/PressRoom/PressReleases/8109-20>. Defendant Szilagyi likewise has experience with creating mutual funds, that in reality more resembled risky hedge funds. In a May 10, 2017 interview with Benzinga, he described converting a hedge fund to a mutual fund, “we changed the legal structure of the fund from a limited partnership to a mutual fund trust. So, pretty much everything else about the fund remained the same: the shareholders, the investment strategy, the portfolio manager, etc.” He noted that there were “four major benefits of the mutual fund structure: it’s more access by investors, daily liquidity, more transparency and more regulatory oversight.” “That’s one of the things that we’ve been doing: bringing these unique investment strategies that were previously only accessible to wealthy investors to the mass market.” <https://www.benzinga.com/personal-finance/financial-advisors/17/05/9430681/catalyst-funds-ceo-talks-alternative-investment-st>

assets as of December 31, 2017” and designated only one asset, AMUR Finance Company, Inc. 18.000% with a principal amount of \$1,900,000, as illiquid. Similarly, the Fund reported “[t]otal illiquid securities represents 0.11% of net assets as of June 30, 2018,” and designated only one asset, AMUR Finance Company, Inc. 18.000% with principal amount of \$1,900,000, as illiquid. The Fund further represented in the N-Q that “0.08% of net assets as of December 31, 2019,” were illiquid and designated only one security as illiquid: Amur Finance VI LLC, 144A with a principal amount of 4,714,066. In the 2017 Annual Report, Defendants stated that “[t]otal illiquid securities represents 0.11% of net assets as of March 31, 2018,” and designated only one asset, AMUR Finance Company, Inc., with a principal amount of \$1,900,000, as illiquid. In the 2018 Annual Report, the Fund reported “[t]otal illiquid securities represents 0.22% of net assets as of March 31, 2019,” and designated two assets, Amur Finance VI LLC, 144A with a principal amount of 4,864,882 and Amur Finance Company, Inc. with a principal amount of 1,900,000.⁸

64. However, the Fund was nowhere near as stable as it reported. Instead, the Fund invested *heavily* in illiquid securities, which is wholly inconsistent with the Fund’s purported objective of “preserving capital” in a mutual fund, from which investors can and often must withdraw sums regularly. Moreover, the Fund’s exposure to legacy RMBS securities was not merely incidental, but rather a very significant part of the Fund’s investment strategy.

65. Plaintiffs, with the assistance of experts, reviewed data relating to the Fund in FINRA’s price reporting vehicle trade reporting and compliance engine (“TRACE”) which compiles trades for fixed income securities. Almost all of the Fund’s assets were TRACE reportable.

⁸ After the Class Period, the Fund suddenly designated six separate assets as illiquid. *See generally*, AlphaCentric Annual Report dated March 31, 2020.

66. For example, a detailed review of the trading activity of the Fund holdings as of December 31, 2019 for the six-month period between September 30th 2019 and March 30th 2020 produced astonishing results clearly illustrating the Fund had significantly more assets that were illiquid than the 15% promised or the under one half of one percent actually reported.

67. Out of a Fund portfolio of approximately 525 bonds only 60 *showed any trade activity at all over the six-month period*. Again, liquidity is measured by the Fund's ability to sell the asset within seven days. However, this review showed that 465 bonds held by the Fund had *no* trading activity whatsoever within six months (let alone during seven days) and 60 bonds showed very limited trading within those six-months.

68. Furthermore, the 60 bonds that did actually trade during that window were only traded 1843 times in six months (approximately 125 business days). Importantly, the 1843 represents every trade in each CUSIP executed in the market, not only trades executed by the Fund. This is an extremely low level of trading within a six-month period. To put this low level of trading into perspective, if each of the 525 bonds held in the Fund traded only once every seven days, there would have been 13,000 trades recorded. Put another way, if the 1843 trades were allocated evenly across the six-month period, one would see the equivalent of each bond registering a trade approximately every 2 months.

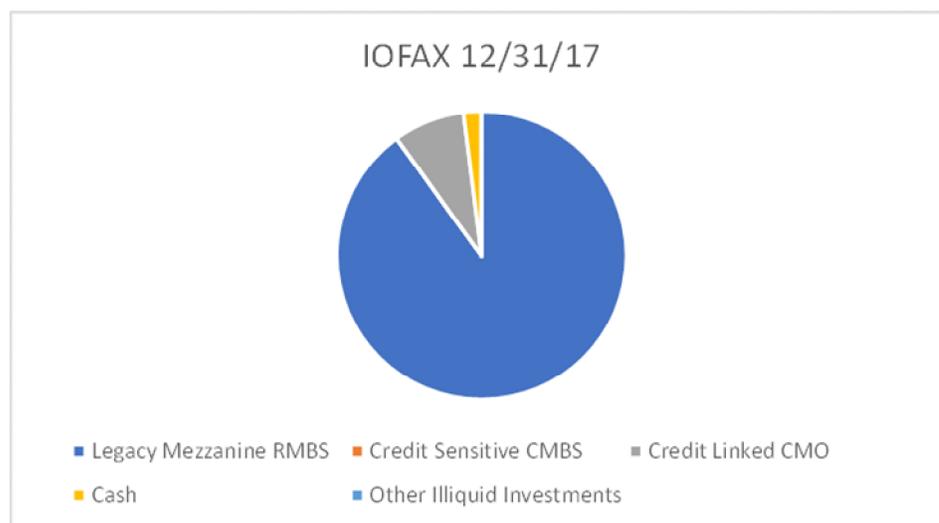
69. Digging even deeper, over 70% of the Fund was invested in risky legacy RMBS bonds. Only 99 trades were observed in the CUSIPs for that 70% of the portfolio during the six-month period. This clear lack of trading illustrates the true liquidity characteristics of the portfolio.

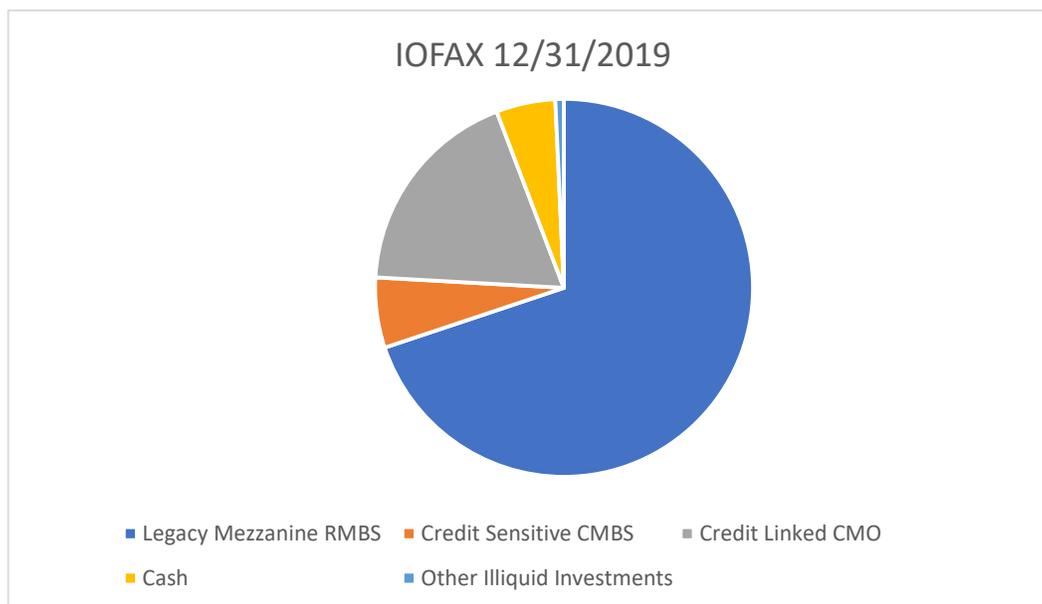
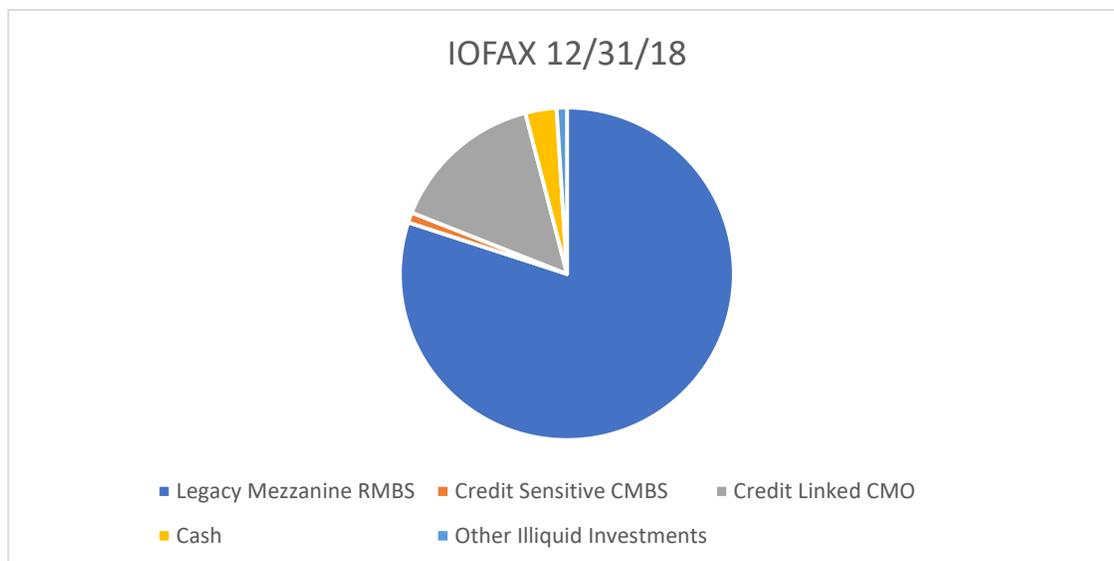
70. Liquidity is defined as the ability to generate cash for a position without an impairment to market value. Indeed, the best way to measure an asset's liquidity is to observe the frequency and price levels of each trade. This was a tall task for Defendants. Unlike assets in

almost every mutual fund, the Fund's portfolio demonstrated little to no observable trading liquidity. As stated herein, the Fund's portfolio consisted of over 525 individual securities in which almost 90% of their holdings never recorded a single observable trade in a given six-month period. Therefore, it is hard to justify categorizing any of these securities as liquid.

71. The statistics run counter to the limitations on mutual funds which are based on protecting liquidity for investors due to the role redemptions play in the mutual fund structure. Given the lack of trading activity, each position was not openly available in the public market. By definition these bonds don't qualify as liquid assets and any representation to the contrary would be an inaccurate statement.

72. Plaintiffs undertook another analysis of the illiquid makeup of the Fund during the Class Period by pulling data from the Bloomberg "Port" function as listed in the Fund's bi-annual disclosures in March and September. The results are as follows and are consistent with the extremely high level of illiquidity discussed herein:





73. Therefore, the vast majority of the Fund's holdings were illiquid throughout the Class Period.

74. Furthermore, as Defendants, given their long history in the markets, would have known, the bonds in the Fund would not trade in a stressed environment, and if they did, they would only sell at a substantially reduced price.

75. The Fund advisors would have needed to run a battery of tests to understand the value of the legacy low rated assets which did not have an active market available for valuation.

76. For example, they would have needed to implement a “Paydown Summary” review, which analyzes the rate the mortgages are being paid down across the portfolio. The following five tables are a “Deal Paydown.” The report shows in high detail every cash flow that comes from the underlying mortgage collateral every month. It also shows very important information such as voluntary prepayment speeds, default rates, losses, loan modifications, and any forbearance or other debt forgiveness.

SVHE 2005-OPT1 MS Mtge Export										Paydown Information			
US RMBS RESB/C 4.467(169)190 CUSIP 83611MDL9 Loan Level										All Collateral			
Summary Paydown Collateral Performance													
Date	Factor	Bond Coupon	Balance	WAC	WAM	WALA	1M CPR	3M CPR	6M CPR	12M CPR			
02/2021		1.18000											
01/2021	0.401619296	1.19800	6,927,932.85	4.467	169	190	5.51	7.11	5.60	8.35			
12/2020	0.401619296	1.20013	6,927,932.85	4.517	170	189	1.91	6.89	5.17	8.07			
11/2020	0.401619296	1.19925	6,927,932.85	4.518	171	188	13.51	8.42	5.65	8.50			
10/2020	0.401619296	1.19813	6,927,932.85	4.542	172	187	4.85	4.08	5.05	8.28			
09/2020	0.401619296	1.22513	6,927,932.85	4.573	173	186	6.66	3.41	7.94	8.65			
08/2020	0.401619296	1.22163	6,927,932.85	4.594	174	185	0.62	2.80	10.42	8.81			
07/2020	0.401619296	1.23450	6,927,932.85	4.597	175	184	2.85	6.02	11.02	8.95			
06/2020	0.401619296	1.21825	6,927,932.85	4.606	176	183	4.89	12.26	10.88	9.40			
05/2020	0.401619296	1.53725	6,927,932.85	4.616	177	182	10.16	17.45	11.25	9.20			
04/2020	0.401619296	1.99663	6,927,932.85	4.635	178	181	20.96	15.75	11.41	8.93			
03/2020	0.401619296	2.67675	6,927,932.85	4.648	179	180	20.77	9.46	9.35	8.38			
02/2020	0.401619296	2.71088	6,927,932.85	4.648	180	179	4.52	4.60	7.17	7.14			
01/2020	0.401619296	2.84200	6,927,932.85	4.668	181	178	1.91	6.83	6.83	7.48			
12/2019	0.401619296	2.75800	6,927,932.85	4.679	182	177	7.29	9.24	7.91	7.72			
11/2019	0.401619296	2.87275	6,927,932.85	4.695	183	176	11.08	9.67	7.09	7.76			
10/2019	0.401619296	3.06838	6,927,932.85	4.733	184	175	9.22	6.82	6.38	7.32			
09/2019	0.401619296	3.19525	6,927,932.85	4.756	185	174	8.59	6.55	7.39	7.91			
08/2019	0.401619296	3.31600	6,927,932.85	4.787	186	173	2.38	4.43	7.11	7.79			
07/2019	0.401619296	3.45438	6,927,932.85	4.784	187	172	8.54	5.95	8.13	9.43			

SVHE 2005-OPT1 MS Mtge Export										Paydown Information			
US RMBS RESB/C 4.467(169)190 CUSIP 83611MDL9 Loan Level										All Collateral			
Summary Paydown Collateral Performance													
Date	WAC	WAM	WALA	Balance	Principal	Net Interest	Total	Forgiveness					
1) 01/2021	4.467	169	190	77,725,025	524,407	219,854	3,134	3,377					
2) 12/2020	4.517	170	189	78,252,565	185,842	219,936	98,926	99,626					
3) 11/2020	4.518	171	188	78,537,694	1,109,508	216,157	3,305	0					
4) 10/2020	4.542	172	187	79,650,388	680,618	225,421	239,593	0					
5) 09/2020	4.573	173	186	80,141,410	615,736	225,243	2,087	0					
6) 08/2020	4.594	174	185	80,764,379	279,484	228,958	30,796	26,420					
7) 07/2020	4.597	175	184	80,968,982	175,188	227,661	315,482	0					
8) 06/2020	4.606	176	183	81,326,413	516,414	230,382	-4,514	0					
9) 05/2020	4.616	177	182	81,829,504	718,306	234,097	198,906	0					
10) 04/2020	4.635	178	181	82,724,983	1,345,022	244,387	437,931	106,602					
11) 03/2020	4.648	179	180	84,530,264	1,746,602	249,664	109,697	68,382					
12) 02/2020	4.648	180	179	86,356,404	226,047	248,446	292,833	172,282					
13) 01/2020	4.668	181	178	86,862,252	266,937	248,294	328,862	254,267					
14) 12/2019	4.679	182	177	87,174,077	612,998	252,754	126,322	40,709					
15) 11/2019	4.695	183	176	87,900,108	1,052,767	257,176	4,098	128					
16) 10/2019	4.733	184	175	88,940,588	1,137,719	264,791	45,457	32,386					
17) 09/2019	4.756	185	174	89,849,665	709,325	270,150	205,588	64,680					

AS OF 11 FEB Prepay BCPR WAL 13.14 Collateral 100.0% RESB/3.8% BVAL

SVHE 2005-OPT1 MS Mtg Export Paydown Information

US RMBS RESB/C 4.467(169)190 CUSIP 83611MDL9 Loan Level All Collateral

Summary	Paydown	Collateral	Performance	All Collateral			
Curr Collat	77,725,025.31		Net Cpn 3.817	WALA 190		Cum Loss	108,718,672
Orig Collat	1,500,000,000.09		WAC 4.4670	WAM 169		Cum Loss %	7.25
Pool Factor	0.051816684			# of Loans 565			

Date	Loss					Gross Interest Accrued
	Liquidation	Forbearance	Other	Other Forgiveness	Other Forbearance	
1) 01/2021	-244	0	1	0	0	292,850
2) 12/2020	-340	0	-360	0	0	296,387
3) 11/2020	3,385	0	-80	0	0	300,331
4) 10/2020	197,452	42,040	101	0	0	305,440
5) 09/2020	1,982	0	105	0	0	308,554
6) 08/2020	-3,046	0	7,422	0	0	310,181
7) 07/2020	211,430	0	104,052	0	0	312,435
8) 06/2020	-4,508	0	-5	0	0	314,629
9) 05/2020	176,900	0	22,006	0	0	319,254
10) 04/2020	281,263	73,813	-23,747	0	0	327,619
11) 03/2020	39,787	0	1,528	0	0	334,184
12) 02/2020	103,247	4,271	13,032	0	0	336,850
13) 01/2020	2,040	4,038	68,517	0	0	340,512
14) 12/2019	83,579	1,783	251	0	0	343,560
15) 11/2019	1,665	2,210	95	0	0	349,308
16) 10/2019	316	6,322	6,434	0	0	355,668

AS OF 11 FEB Prepay BCPR WAL 13.14 Collateral 100.0% RESB/3.8% BVAL

SVHE 2005-OPT1 MS Mtg Export Paydown Information

US RMBS RESB/C 4.467(169)190 CUSIP 83611MDL9 Loan Level All Collateral

Summary	Paydown	Collateral	Performance	All Collateral					
Curr Collat	77,725,025.31		Net Cpn 3.817	WALA 190		Cum Loss	108,718,672		
Orig Collat	1,500,000,000.09		WAC 4.4670	WAM 169		Cum Loss %	7.25		
Pool Factor	0.051816684			# of Loans 565					

Date	Net Interest			Scheduled Principal			Total	Full Prepay
	est	Paid	Accrued	Paid	Total	Deferred Int.		
1) 01/2021	258,268	250,379	219,854	159,685	159,685	0	364,722	473,778
2) 12/2020	257,986	253,818	219,936	158,987	158,987	0	26,855	146,500
3) 11/2020	253,666	257,137	216,157	157,046	157,046	0	952,462	936,065
4) 10/2020	264,085	261,906	225,421	160,396	160,396	0	520,222	424,502
5) 09/2020	263,321	264,807	225,243	161,029	161,029	0	454,708	436,015
6) 08/2020	268,026	266,279	228,958	162,955	162,955	0	116,529	5,490
7) 07/2020	266,263	268,343	227,661	161,930	161,930	0	13,259	37,084
8) 06/2020	269,474	270,304	230,382	162,701	162,701	0	353,712	318,760
9) 05/2020	273,546	274,444	234,097	161,504	161,504	0	556,802	518,201
10) 04/2020	285,234	281,911	244,387	167,405	167,405	0	1,177,617	984,340
11) 03/2020	291,811	287,369	249,664	170,553	170,553	0	1,576,049	1,328,402
12) 02/2020	290,278	289,833	248,446	172,466	172,466	0	53,581	127,001
13) 01/2020	290,027	293,181	248,294	172,238	172,238	0	94,700	305,175
14) 12/2019	294,949	295,936	252,754	174,450	174,450	0	438,547	326,126
15) 11/2019	299,952	301,142	257,176	176,431	176,431	0	876,336	672,765
16) 10/2019	308,089	306,948	264,791	180,838	180,838	0	956,881	621,628
17) 09/2019	314,114	311,224	270,150	184,066	184,066	0	525,260	358,625

AS OF 11 FEB Prepay BCPR WAL 13.14 Collateral 100.0% RESB/3.8% BVAL

SVHE 2005-OPT1 MS Mtg Export Paydown Information

US RMBS RESB/C 4.467(169)190 CUSIP 83611MDL9 Loan Level All Collateral

Summary	Paydown	Collateral	Performance	All Collateral							
Curr Collat	77,725,025.31		Net Cpn 3.817	WALA 190		Cum Loss	108,718,672				
Orig Collat	1,500,000,000.09		WAC 4.4670	WAM 169		Cum Loss %	7.25				
Pool Factor	0.051816684			# of Loans 565							

Date	Unscheduled Principal			Subsequent				
	Total	Full Prepay	Curtailment	Capitalization	Recovery	Other Gain	Loss	Recovery
1) 01/2021	364,722	473,778	44,303	-153,603	244	0	67	311
2) 12/2020	26,855	146,500	27,757	-147,742	340	0	56	756
3) 11/2020	952,462	936,065	43,950	-90,494	62,741	199	0	391
4) 10/2020	520,222	424,502	27,944	-479,978	119,918	427,837	101	311
5) 09/2020	454,708	436,015	25,925	0	-1,982	-5,251	7,948	610
6) 08/2020	116,529	5,490	32,318	-111,447	91,913	98,255	8,514	6,800
7) 07/2020	13,259	37,084	17,381	-71,850	1,457	29,187	8	4,917
8) 06/2020	353,712	318,760	27,988	-6,358	4,508	8,814	178	13,505
9) 05/2020	556,802	518,201	30,177	-1,090	9,787	-272	718	604
10) 04/2020	1,177,617	984,340	17,818	-33,018	207,058	1,418	909	140,775
11) 03/2020	1,576,049	1,328,402	63,261	-138,462	294,216	28,631	3,779	7,836
12) 02/2020	53,581	127,001	37,492	-113,063	2,151	0	474	2,151
13) 01/2020	94,700	305,175	53,886	-479,818	0	215,457	424	0
14) 12/2019	438,547	326,126	33,135	-64,564	130,813	13,038	3,893	536
15) 11/2019	876,336	672,765	47,363	-20,443	162,570	14,080	2,086	311
16) 10/2019	956,881	621,628	45,102	-128,980	157,787	261,344	6,952	2,267
17) 09/2019	525,260	358,625	111,763	-154,872	167,257	42,486	3,148	120

77. Defendants likewise would have needed to review the delinquency pipeline through a “Collateral Performance” analysis. The image below shows the collateral since the beginning of the deal (in this case 2005). This analysis specifically encompasses a number of important statistics to review in order to understand delinquencies and loan defaults/foreclosures.

	01/2021	12/2020	11/2020	10/2020	09/2020	08/2020	Earliest*
1) Balance (M)	77,725	78,253	78,538	79,650	80,141	80,764	1,481,693
2) Pool Factor	0.052	0.052	0.052	0.053	0.053	0.054	0.988
3) # of Loans	565	572	576	583	586	590	7,951
4) WAC	4.467	4.517	4.518	4.542	4.573	4.594	7.303
5) Net WAC	3.817	3.867	3.868	3.892	3.923	3.944	6.803
6) WAM	169	170	171	172	173	174	356
7) WALA	190	189	188	187	186	185	2
8) WALTV (Amort) %	64.23	64.11	64.10	64.11	64.15	64.16	77.73
9) HPI LTV (Amort) %	50.48	50.34	50.33	50.46	50.43	50.44	75.54
10) LTV > 80%	17.20	16.45	16.35	15.70	16.30	16.64	33.59
11) Delinq 30 days %	2.47	2.92	2.21	1.48	1.32	1.23	0.00
12) Delinq 60 days %	0.62	0.99	0.34	0.06	0.33	0.14	0.00
13) Delinq 90 days %	5.81	5.80	7.08	7.39	8.77	8.93	0.00
14) Bankruptcy %	3.21	3.26	2.61	2.77	3.40	3.10	0.00
15) Foreclosure %	3.83	4.40	4.70	4.51	4.51	4.12	0.00
16) REO %	1.74	1.41	1.34	1.41	1.40	1.39	0.00
17) Delinq. 60+ %	15.22	15.87	16.07	16.15	18.41	17.67	0.00
18) Delinq. 90+ %	14.60	14.88	15.72	16.08	18.08	17.53	0.00
19) Cumul Loss %	7.248	7.249	7.242	7.242	7.255	7.264	
20) Second Lien %	0.19	0.19	0.19	0.18	0.18	0.18	0.08
21) First Lien %	99.81	99.81	99.81	99.82	99.82	99.82	99.92
22) # of Mod Loans Cur Period	5	2	2	6	0	4	0

78. A final test Defendants would have needed to undertake to understand the risks and values of the assets being held in the Fund is to review risk scenarios using Voluntary Prepayments, Defaults, Severity of Loss and Servicer Advances through a “Structure Paydown” analysis. What the image shows is an actual bond within the Fund and how much principal and interest and/or losses it will take given assumptions on defaults and losses. It illustrates what is called the “Waterfall” of the deal structure. All of these charts show that, by necessity, the assets in the Fund were not liquid as they could not be timely valued and sold given the amount of testing required.



D. The Truth Is Revealed

79. The market started experiencing signs of stress at the beginning of 2020, and the Defendants continued to ignore their duty to accurately value and categorize assets. As required, the “portfolio investments’ classifications” must occur “at least monthly in connection with reporting the liquidity classification for each portfolio investment on Form N-PORT . . . *and more frequently if changes in relevant market*, trading, and investment-specific considerations are reasonably expected to materially affect one or more of its investments' classifications.” 17 CFR § 270.22e-4. This failure created an ever increasing level of risk due to the highly illiquid nature of the assets in the Fund.

80. January 2020 brought news of the Coronavirus spread with the U.S. formally announcing a Coronavirus Task Force and on January 30th announcing that the first person to person transmission case was confirmed in Chicago. By mid-February it became clearer the impact of the virus was far greater than anticipated. Stable risk-free assets like US Treasury Securities increased in value as investors turned to a safer risk allocation. Credit sensitive assets

gradually started to underperform. From February 14, 2020 to March 11, 2020 the S&P 500 traded down 18.78%, Mortgage REITS were down 22%, and high yield bonds were down over 7%. However, as the chart below demonstrates, Defendants only reported that the Fund was down 0.23% within the same period.⁹



81. Without classifying or valuing the Fund's holdings, Defendants were able to mask the impending disaster. Once again, going into March 2020, the Fund's portfolio was made up of approximately 70% legacy Non-Agency mortgage-backed securities, 18% collateralized mortgage obligations 6% non-agency commercial mortgage-backed securities and 6% cash. Therefore, 70% of the portfolio was made up of the risky assets which had already been responsible for the 2006-2008 market crash.

82. It is clear that in the months leading to March, 2020, Defendants would have been aware of the extreme liquidity risks of the Fund's portfolio, as other professionals were clearly aware and proactive. For example, PIMCO's Income Opportunity Fund (PKO) was down almost

⁹ For scale, each asset starts at 100 on February 14, 2020.

17% in the same February and early March, 2020 period. From March 18, 2020 to March 31, 2020 PIMCO, however, PIMCO was up 37.7%.

83. The graph below evidences the Fund's troubling valuation pattern and inability to continue to hide its risks. From mid-March until the end of the month credit sensitive assets showed stability and modest improvement while the value of the Fund nosedived.



84. Any liquidity test performed during this period would have immediately failed the 85% liquid asset required under the rules. Under 17 CFR § 270.22e-4, the assets were illiquid if “the fund reasonably expects cannot be sold or disposed of in *current market conditions* in seven calendar days or less without the sale or disposition significantly changing the market value of the investment.” [Emphasis added.]. The Fund was required to “review its portfolio investments’ classifications, *at least monthly* in connection with reporting the liquidity . . . *and more frequently if changes in relevant market*, trading, and investment-specific considerations are reasonably expected to materially affect one or more of its investments’ classifications.” *Id.* [Emphasis added.]

85. Ultimately, in March 2020, the Fund experienced a sudden, dramatic drop in the NAV of its shares, with over \$1.8 billion of Fund value evaporating in a matter of days. The

Fund's investors suffered hundreds of millions of dollars in losses. Between March 17, 2020 and March 23, 2020, the NAV of the Fund's IOFAX share class, IOFCX share class and IOFIX share class each declined approximately 38%, or \$4.67 per share, \$4.89 per share and \$4.68 per share, respectively.

86. Such a rapid deterioration in the NAV is extremely unusual for a mutual fund given the extensive regulatory framework designed to prevent excessive risk-taking and to safeguard mutual fund investors.

87. The drop in the Fund's NAV was not caused by general economic decline or upheaval in the credit markets but, rather, by Defendants' risky failure to adhere to the Fund's stated fundamental investment policies and objectives and failure to appropriately manage the risky assets in the portfolio in steady markets and in turbulence. These failures left the Fund extremely vulnerable to inevitable cycles of financial crisis.

88. The Fund's losses were far in excess of those of the U.S. aggregate bond market during the same time period. The drop was due to the Fund having a high-level of hard to sell, illiquid assets, and getting hit with a number of (expected) redemptions. The Fund was unprepared for any turbulence, even with weeks of warning and a clearly shifting market. The Fund should have performed enhanced liquidity and valuation analysis.

89. Given the 2006-2008 market, and the Fund's investment in legacy securities directly responsible for the market crash, the occurrence of another credit crisis with these particular assets, was not an unforeseeable risk and, had Defendants' investment policies been truly guided by the Fund's purported investment objective, the Fund would have been protected from, instead of vulnerable to, such crises.

90. On the Sunday before the market opened on March 23, 2020, the Fund sought buyers for \$1.25 billion of securities. The market was flooded and the bonds could not be sold. Bloomberg reported that the fire sale “included at least \$1.25 billion of securities” as the Fund “sought buyers for a swath of bonds backed primarily by private-label mortgages as it sought to raise cash.” In a public statement reported by Financial Times, the Fund noted that because of the “lack of liquidity in the marketplace” it had put a larger pool of assets up for grabs to see which drew “the most favourable prices.” In the end to get as much cash as possible the Fund sold its most valuable (and liquid) assets.

91. Reuters reported that the Fund “lost more than 30% of its value last week as it is heavily exposed to borrowers with lower credit scores.” Analysts were especially puzzled because, just before the sudden drop in NAV, “the [F]und reported a steady NAV for weeks, despite extreme stress across virtually all credit markets” due to the global coronavirus pandemic. The Fund ultimately shrank to approximately \$1.4 billion in assets on March 25, 2020, down from over \$4 billion in assets as of December 31, 2019.

92. Since the truth has come to light about the specific illiquidity risks, the Fund changed its risk statements. On March 23, 2020, the Fund filed a Prospectus Supplement with the SEC (“the March 23 Supplement”), adding a new disclosure to its “Liquidity Risk” and “Market Risk” sections. The new Liquidity Risk warns that “[t]o satisfy shareholder redemptions, it is more likely the Fund will be required to dispose of portfolio investments at unfavorable prices compared to their intrinsic value.”

93. The Fund does not explain what is meant by “more likely,” but it is clear that the risk that the Fund would need to dispose of illiquid investments at “unfavorable prices”, was real and existing long before March 23, 2020.

94. The Fund also changed the market risk section:

Local, regional or global events such as war, acts of terrorism, the spread of infectious illnesses or other public health issues, recessions and depressions, or other events could have a significant impact on the Fund and its investments and *could result in increased premiums or discounts to the Fund's net asset value, and may impair market liquidity, thereby increasing liquidity risk*. The Fund could lose money over short periods due to short-term market movements and over longer periods during more prolonged market downturns. During a general market downturn, multiple asset classes may be negatively affected. Changes in market conditions and interest rates can have the same impact on all types of securities and instruments. In times of severe market disruptions you could lose your entire investment.

[Emphasis added.]

95. In the December 2020 Year in Review Report, Defendants stated that they had “met redemptions in an orderly fashion, and we were able to hold onto the strongest legacy positions in the portfolio.” There was nothing orderly about a Sunday fire-sale that left the Fund with the least valuable assets and an uncertain future for investors.

DEFENDANTS' MISLEADING AND INACCURATE OFFERING MATERIALS

96. This is a class action on behalf of all persons or entities who acquired the Fund's shares during the Class Period from October 14, 2017 through March 22, 2020, inclusive, pursuant to untrue and misleading Registration Statements and Prospectuses issued in connection with the continuous offering of the Fund's shares during this period.

97. Defendants issued and distributed the following documents in connection with the continuous offering of the Fund's shares to the investing public during the Class Period:

(a) The Fund Registration Statements filed with the SEC on the following dates (collectively, the “Registration Statements”):

- (i) July 27, 2018 (the “2018 Registration Statement”); and
- (ii) July 26, 2019 (the “2019 Registration Statement”).

(b) The Fund Prospectuses dated August 1, 2018, and August 1, 2019 (collectively, the “Prospectuses”), which formed part of the Registration Statements);

(c) The Fund Summary Prospectuses dated August 1, 2018, and August 5, 2019 (collectively, the “Summary Prospectuses”);

(d) The Fund Statements of Additional Information (“SAIs”), which were expressly incorporated into the Prospectuses and thereby the Registration Statements, dated August 1, 2018, and August 1, 2019;

(e) The Annual Reports which were expressly incorporated into the Prospectuses and thereby the Registration Statements, dated June 6, 2018, and June 7, 2019; and

(f) Fund Fact Sheets published during the Class Period, which were issued quarterly and used by Defendants to solicit purchasers of Fund shares.

98. The documents referenced in ¶97 are collectively referred to herein as the “Offering Materials.”

99. Each of the foregoing documents was negligently prepared and contained untrue statements of material fact and/or omitted to state other facts necessary to make the statements made not misleading, as described below. While the documents were not identical, they contained many substantially similar untrue statements and were rendered misleading by substantially similar omissions of material fact.

100. A reasonable investor would have viewed the undisclosed facts described herein, jointly and severally, as having altered the total mix of available information. A reasonable investor also would understand that the undisclosed facts would cause the Fund to undertake

materially increased investment risk during the Class Period because the Fund was investing in a manner that was of materially greater risk than had been disclosed.

101. Defendants made materially false and misleading statements in the Offering Materials regarding the Fund's investment strategy, particularly its holding of illiquid assets including what percent of its assets were illiquid, the valuation of those securities, the redeemability of the assets and the risks to investors of investing in the Fund. Defendants further made materially false and misleading statements in the Offering Materials regarding systems and controls in place to accurately value and categorize the Fund's assets. Finally, they failed to appropriately disclose risk factors that could have put investors on notice for the actual and substantial risks.

A. Material Misstatements Regarding Liquidity and Diversification

102. The Offering Materials failed to accurately and honestly report the composition of the Fund's assets. The Offering Materials stated that, "in selecting securities for investment," the Fund "prioritizes *capital preservation*, and favors undervalued investments that produce consistent returns in most interest rate environments." The Offering Materials, including the July 2018 and 2019 Registration Statements and Prospectuses, also stated that the Fund "selects those securities for investment that it believes offer the best risk/return opportunity based on its analyses of a variety of factors including collateral quality, duration, structure, excess interest, credit support, potential for greater upside and less downside capture, liquidity, and market conditions."

103. During the Class Period, the Offering Materials, including but not limited to the 2018 and 2019 Prospectuses and Registration Statements and 2018 and 2019 SAIs also *repeatedly and continuously*, year after year, represented that the "[t]he Fund *may hold up to 15%* of its net assets in illiquid securities" and that "[n]o Fund will invest more than 15% of its net assets in

securities for which there are legal or contractual restrictions on resale and other illiquid securities.” [Emphasis added.]

104. The Offering materials, including the 2018 and 2019 Prospectuses and 2018 and 2019 Registration Statements, indicate that the Fund “*primarily*” invested “in asset-backed fixed income securities, such as securities backed by credit card receivables, automobiles, aircraft, student loans, equipment leases and agency and non-agency residential and commercial mortgages.” [Emphasis added.]

105. The Offering Materials, including the 2018, 2019 Registration Statements and Prospectuses, further described the composition of the Fund as investing in “over 25% of its assets in residential mortgage-backed securities (agency and non-agency) and commercial mortgage-back securities.” The Fund was classified, in the 2018 Prospectus Statements and 2018 and 2019 Registration Statements, as “non-diversified” which meant that “a relatively high percentage of the Fund’s assets *may* be invested in securities of a limited number of companies” and the investments “*could* be in the same or related economic sectors.”

106. The statements in ¶¶102-105 were untrue statements of fact and material misstatements because:

- The stated investment objective of “capital preservation” affirmatively misrepresented, the true nature and scope of the high-risk, high-return investment strategy Defendants employed. The Fund invested in a high-risk-high-reward objective which placed investors’ capital at extreme risk in unsteady markets. The Fund was not following its stated objective in implementing its investment strategy.
- The Fund was far more than 15% illiquid. Indeed, Defendants did not accurately identify and categorize the portfolio assets, failing to identify the illiquid assets. If

Defendants had identified correctly the amount of illiquid assets, they would have had to report far more than 15% were illiquid and presented a plan to rectify the situation.

- The Fund listed a diverse array of assets that is indicated were the *primary* investments, including “credit card receivables, automobiles, aircraft, student loans, equipment leases and non-agency residential and commercial mortgages” however, the vast majority (*over 90%*) were residential and commercial mortgages.
- The statement that the assets were composed of “over 25%” of RMBS and CMBS was materially misleading because it failed to state that the assets were actually *over 75%* of these asset types.
- In describing that the Fund was “non-diverse” the statements were materially misleading because it was not the case that the Fund “may” be or “could” be investing in a limited number of companies or sectors, but instead the Fund *was* investing almost primarily in one sector, and was failing to have any diversity whatsoever.

107. In the Offering Materials, including the 2017 Annual Report, “[t]otal illiquid securities represent[ed] 0.11% of net assets as of March 31, 2018,” and designated only one asset, AMUR Finance Company, Inc., with a principal amount of \$1,900,000, as illiquid. In the 2018 Annual Report, the Fund reported “[t]otal illiquid securities represents 0.22% of net assets as of March 31, 2019,” and designated two assets, Amur Finance VILLC, 144A with a principal amount of 4,864,882 and Amur Finance Company, Inc. with a principal amount of 1,900,000 as illiquid.

108. The statements in ¶107 were false and misleading because the Fund failed to disclose the true percentage of illiquid assets, reporting rates of less than one percent of illiquid assets.

B. Material Misstatements Regarding Valuation

109. The Offering Materials for the Fund explain that, “[e]ach Fund calculates its net asset value (“NAV”) per share as of the close of regular trading on the NYSE every day the NYSE is open. . . . Each Fund’s NAV is calculated by taking the total value of the Fund’s assets, subtracting its liabilities, and then dividing by the total number of shares outstanding, rounded to the nearest cent.”

110. The Offering Materials, including the 2018 and 2019 Registration Statements and the 2019 Prospectus, detailed how the Fund calculated its daily NAV. For assets for which market quotations are available, the assets were valued at market value. In the absence of an ascertainable market value, “the Advisor will value the Funds’ assets at their fair value according to policies approved by the Board of Trustees.” They further note that “the Advisor may need to price the security using the Fund’s fair value pricing guidelines.”

111. The statements in ¶¶109-110 were false and misleading because the Fund failed to appropriately calculate the NAV using market data. The daily NAV did not reflect the true value of the illiquid securities held by the Fund and for which the Trust could (and would) face a no-bid market. The statements are further inaccurate and misleading because they are based on a NAV that fails to haircut the asset values for their illiquid nature. Further, the Fund’s assets were not “valued at their market value.” The Fund failed to disclose the true (still unknown) extent of the Fund’s illiquid holdings, that the Fund was not appropriately valuing those assets.

112. The Fund's investments were priced subjectively in a self-serving and opaque process for which there was no market price check. In the absence of such a check, the Fund's assets were overvalued.

113. In fact, a comparison between the Fund's valuation of its holdings (even after the fire sale) and Bloomberg's valuation of the same concretely demonstrates the skewed valuation.

		3/31/2020			
Bond	Fund Valuation	Bloomberg Valuation	Position	Value Differential	
INABS 2005-C M4	40.47	19.83	11,200,000.00	(2,311,680.00)	
OOMLT 2005-4 M4	28.93	23.39	3,207,191.00	(177,678.38)	
JPMAC 2006-ACC1 M3	43.83	23.2	12,759,465.00	(2,632,277.63)	
OOMLT 2007-CP1 M1	37.86	21.21	11,866,760.00	(1,975,815.54)	
JPMAC 2006-FRE1 M3	36.87	25.37	10,000,000.00	(1,150,000.00)	
RASC 2006-EMX1 M3	40.12	28.203	2,650,606.00	(315,872.72)	
SVHE 2005-OPT1 M5	28.51	23.04	5,321,456.00	(291,083.64)	
NHELI 2006-HE3 M1	41.85	32.675	21,428,312.00	(1,966,047.63)	
RASC 2006-EMX4 M1	61.31	35.64	8,414,446.00	(2,159,988.29)	
CBASS 2007-SP2 M7	21.31	35.066	3,718,662.00	511,539.14	
RASC 2006-EMX2 M2	53.45	38.85	8,945,627.00	(1,306,061.54)	
JPMAC 2007-CH3 M3	52	33.24	11,493,416.00	(2,156,164.84)	
CMLTI 2007-WFH1 M4	58.65	30.156	1,507,219.00	(429,466.98)	
RASC 2007-KS2 M1	61.44	35.7	30,643,626.00	(7,887,669.33)	
RAMP 2006-RS1 M1	46.76	27.8	2,125,927.00	(403,075.76)	
SVHE 2006-1 M1	42.02	28.83	9,473,598.00	(1,249,567.58)	
CMLTI 2007-WFH4 M4	53.67	43.75	1,437,000.00	(142,550.40)	
RAMP 2005-EFC6 M5	42.54	37	3,924,746.00	(217,430.93)	
RAMP 2006-RS4 M2	52.8	36.89	3,448,818.00	(548,706.94)	
CMLTI 2006-NC1 M1	67.33	41.36	9,419,558.00	(2,446,259.21)	
CARR 2006-RFC1 M2	50.87	36.51	8,416,417.00	(1,208,597.48)	
FFML 2005-FF5 M5	43.21	36.97	3,535,772.00	(220,632.17)	
ABFC 2007-NC1 M1	45.87	35.66	4,879,073.00	(498,153.35)	
RASC 2006-KS8 M1	60.55	37.3	7,462,179.00	(1,734,956.62)	
CMLTI 2006-HE2 M4	52.99	32.83	3,000,000.00	(604,800.00)	
CWL 2005-6 M7	35.28	41.31	3,770,244.00	227,345.71	
BSABS 2005-CL1 M1	58.38	47.86	4,048,000.00	(425,849.60)	
AMSI 2005-R5 M7	36.62	31.61	3,578,433.00	(179,279.49)	
JPMAC 2007-CH4 M3	51.73	34.18	16,788,000.00	(2,946,294.00)	
JPMAC 2006-NC1 M2	55.65	39.18	10,414,426.00	(1,715,255.96)	
RAMP 2006-NC3 M2	60.8	33.91	15,665,109.00	(4,212,347.81)	
RAMP 2006-RZ3 M2	64.06	44.04	7,978,042.00	(1,597,204.01)	
AABST 2005-4 M3	51.64	36.41	21,320,000.00	(3,247,036.00)	
SVHE 2006-OPT2 M1	58.4	40.6	49,723,825.00	(8,850,840.85)	
ACE 2006-OP1 M1	56.4	39.6	22,817,104.00	(3,833,273.47)	
MSAC 2005-WMC2 M5	51.28	42.89	1,895,314.00	(159,016.84)	
SAIL 2005-HE2 M3	62.51	54.78	2,977,141.00	(230,133.00)	
OOMLT 2006-1 M2	54.65	40.27	43,750,000.00	(6,291,250.00)	
SVHE 2005-OPT4 M2	33.1	31.13	6,530,697.00	(128,654.73)	
SVHE 2005-OPT2 M3	55.36	39.88	8,802,000.00	(1,362,549.60)	
RASC 2006-KS4 M3	63.33	41.63	8,915,613.00	(1,934,688.02)	
GSAMP 2005-HE4 M5	53.84	34.79	13,226,000.00	(2,519,553.00)	
SABR 2006-OP1 B1	44.38	39.12	3,000,000.00	(157,800.00)	
				(73,086,678.50)	

114. Additionally, because the Fund failed to properly characterize the vast majority of its investments as illiquid, the Fund's pricing did not properly account for and disclose liquidity risk. As a result, when the Fund ultimately needed to sell assets in March, 2020, it was forced to accept the actual "fair value" the market would pay, which was less than the "value" Defendants had assigned to those assets using their undisclosed, subjective internal valuation techniques.

C. Material Misstatements Touting Failing Systems, Controls and Compliance by the Fund

115. Under 17 CFR § 270.22e-4, the Fund was required to "adopt and implement a written liquidity risk management program ("program") that is reasonably designed to assess and manage its liquidity risk." The Fund made a number of misrepresentations regarding its risk management systems in place. The Fund presented a series of systems to protect investors from improperly valued assets and a drop in Fund value if and when redemptions were needed.

116. In the 2Q2018 and 4Q2019 Fact Sheets, the Company told investors that its "RMBS Investment Process" included "[r]un[ning] scenario/cash flow analysis to stress test different interest, credit and macroeconomic environments."

117. The Offering Materials also touted a robust compliance and pricing system in place, which included the "Valuation Committee" comprised of the Trust's Treasurer or Assistant Treasurer and "either the Trust's Chief Compliance Officer or a Trustee that is independent of the adviser/sub-adviser and the fund involved in the subject valuation." The publicly available documents boasted that this committee met 40 times in 2018 alone (37 times in 2019). They also elaborated on a "Pricing Committee" and a "Fair Value Committee," all of which were

“responsible for the valuation and revaluation of any portfolio investment for which market quotations or sale prices are not readily available” such as illiquid securities.

118. The Offering Materials further boasted about Board oversight and that the Audit Committee, which was comprised of Defendants Caldwell, Weisz and Pariser, assisted “the full Board in fulfilling its oversight responsibilities to the shareholders and the investment community relating to fund accounting, reporting practices and the quality and integrity of the financial reports.”

119. The Offering Materials, including the 2017, 2018 and 2019 Registration Statements, explain the Fund’s purported risk oversight procedures and how the Board should have been actively protecting the Fund. The Offering Materials stated in pertinent part as follows:

In its risk oversight role, *the Board oversees risk management*, and the full Board engages in *discussions of risk management and receives reports on investment and compliance risk at quarterly meetings and on an ad hoc basis, when and if necessary*. The Board, directly or through its Audit Committee, reviews reports from among others, the advisers, sub-advisers, the Trust’s Chief Compliance Officer, the Trust’s independent registered public accounting firm, and the Independent Trustees’ counsel, as appropriate, regarding risks faced by the Trust and the Fund and the risk management programs of the Trust, the advisers and certain service providers. *The full Board regularly engages in discussions of risk management and receives compliance reports that inform its oversight of risk management from the Trust’s Chief Compliance Officer at quarterly meetings and on an ad hoc basis, when and if necessary*. The Trust’s Chief Compliance Officer also meets at least quarterly in executive session with the Independent Trustees. . . . Generally, the Board believes that its oversight of material risks is adequately maintained through the risk-reporting chain[.]

[Emphasis added.]

120. The statements in ¶¶115-119 were material misstatements because:

- The Fund was clearly not running stress tests because even a basic analysis would have identified the high level of illiquid assets and would have determined that the Fund contained more than 15% illiquid assets;
- Even though they met an outrageous number of times, the committees somehow completely failed to adequately value the Fund's holdings because, at a basic level, they did not identify and classify the illiquid securities;
- The statements presented systems and controls that were not functioning or not utilized as reported since they failed to identify the increased percentages of illiquid assets and the Board failed to "oversee risk management," or "regularly engage[] in discussions of risk management" in any meaningful way; and
- Defendants failed to pressure test the Fund valued and adequately review the valuation of subprime, Alt-A and other credit sensitive bonds that composed over 90% of the Fund.

D. Material Misstatements Regarding Redemptions

121. In the 2018 and 2019 Registration Statements and the 2019 Prospectus, the Fund assured investors that it had planned for the need to "pay redemptions from cash, cash equivalents, proceeds from the sale of Fund shares, a line of credit, and then from the sale of portfolio securities." They further noted that these payment methods "will be used in regular and stressed market conditions." This statement indicates that the Fund's Advisors and Board had assessed what would happen to the assets in a stressed market, and that they were therefore prepared for stressed market conditions and increased redemptions.

122. The statements in ¶121 were false and misleading because Defendants failed to pressure test the asset valuation in "stressed market conditions." They could not make the

redemption payments in “stressed market conditions” because of the extremely large amount of illiquid assets and could not sell at market prices within the short timeframe required by the Fund’s redemption rules.¹⁰

E. Boiler Plate Risks Factors Were Not Sufficient to Disclose the Real and Ongoing Significant Risks to Investors

123. The Offering Documents stated that the Liquidity Risk in the Fund “exists when particular investments of the Fund would be difficult to purchase or sell, possibly preventing the Fund from selling such illiquid securities at an advantageous time or price, or possibly requiring the Fund to dispose of other investments at unfavorable times or prices in order to satisfy its obligations.”

124. The Fund also presented boilerplate language for Market Risk, which “may also affect the value of the Fund. Factors such as domestic economic growth and market conditions, interest rate levels and political events affect the securities markets.”

125. The risk warnings in ¶¶123-124 were materially false and misleading because they did not accurately state that the liquidity and market risks had come to pass due to a higher than disclosed percentage of illiquid assets within the portfolio. When taken with the material misstatement that the Fund would have no more than “15% illiquid assets,” the risk that the Fund may need to “to dispose of other investments at unfavorable times or prices in order to satisfy its

¹⁰ In the CFTC Order concerning Defendant Szilagyi and Catalyst (discussed above at ¶¶62), it explains that, similarly, there the Portfolio Manager, supervised by Defendant Szilagyi, represented that “he used sophisticated options modeling software to stress test the portfolio” and “the portfolio manager made similar statements, emphasizing that he stress tested the portfolio against 5% and 10% increases in the underlying market.” Catalyst had also stated publicly that it reviewed the risk daily, while the CFTC found the “risk manager did not review the Fund’s risk metrics on a daily basis. Catalyst failed to take adequate steps to deter the making of the foregoing misstatements regarding the Fund’s risk management or to ensure that the Fund was managed in such a way as to make them accurate.” CFTC Action, CFTC Docket No. 20-13 (Jan. 27, 2020). Available at related link: <https://www.cftc.gov/PressRoom/PressReleases/8109-20>

obligations” because market conditions “may also affect the value of the Fund” was more than just a possibility -- it was a reality.

126. The Fund presented boilerplate risk disclosures related to Management Risk, and the risk “the attractiveness, value and potential appreciation of particular stocks or other securities in which the Fund invests or sells short may prove to be incorrect and there is no guarantee that the portfolio manager's judgment will produce the desired results.”

127. The Fund disclosed that “the portfolio may focus on a limited number of investment and will be subject to potential for volatility than a diversified fund.”

128. The risk warnings in ¶¶126-127 were materially false and misleading because they do not accurately state the events that may happen were actually happening.

F. Failure to Describe Known Trends or Uncertainties or Significant Risk

129. Item 303 of SEC Regulation S-K, 17 C.F.R. §229.303(a)(3)(ii), requires defendants to disclose “any *known* trends or uncertainties that have had or that [the] registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations.” [Emphasis added.] Similarly, Item 105 of SEC Regulation S-K, 17 C.F.R. §229.105, requires, in the “Risk Factor” section of the Registration Statements and Prospectuses, “a discussion of the most significant factors that make the offering speculative or risky” and requires each risk factor “adequately describe[] the risk.” The failure to disclose in the Offering Materials the risk of severe losses to Fund investors in the case of rapidly increasing redemptions and due to the illiquidity of its holdings violated 17 C.F.R. §229.303(a)(1) and §229.303(a)(3)(ii) because it would (and did) result in the Fund’s liquidity increasing or decreasing in a material way and because it would (and did) have an unfavorable impact on the Fund’s net investment income from operations. The failure also violated 17 C.F.R. §229.105 because these specific risks were not adequately disclosed, or disclosed at all.

CLASS ACTION ALLEGATIONS

130. Plaintiff brings this action as a class action on behalf of herself and all persons who purchased shares of the Fund during the Class Period (the “Class”). Excluded from the Class are Defendants and their families, the officers and directors of the Fund, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest.

131. The members of the Class are so numerous that joinder of all members is impracticable. As of March 2, 2020, there were over 33.297 million IOFAX shares outstanding, 12.596 million IOFCX shares outstanding, and 287.545 million IOFIX shares outstanding. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by the Fund or its agents and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

132. Common questions of law and fact predominate and include: (i) whether Defendants violated the Securities Act; (ii) whether Defendants omitted and/or misrepresented material facts; and (iii) the extent and appropriate measure of damages.

133. Plaintiff’s claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants’ wrongful conduct in violation of federal law that is complained of herein.

134. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

135. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the

damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

COUNT I

Violation of §11 of the Securities Act (Against the Trust, Distributor, and Individual Defendants)

136. Plaintiff incorporates the allegations in ¶¶1-135 as though fully set forth herein.

137. This Count is brought pursuant to §11 of the Securities Act on behalf of Plaintiff and the Class against the Trust, the Distributor and the Individual Defendants.

138. The Registration Statements were inaccurate and misleading, contained untrue statements of material fact, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

139. The Trust is the registrant for the shares of the Fund, and as such is strictly liable for the false statements contained in the Registration Statements. The Distributor, as the Fund's underwriter, and the Trustee Defendants who signed the Registration Statements, were responsible for the contents and dissemination of the Registration Statements.

140. None of the Defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statements were true and without omissions of any material facts and were not misleading.

141. By reasons of the conduct herein alleged, each Defendant violated, and/or controlled a person who violated, §11 of the Securities Act.

142. Plaintiff acquired shares of the Fund during the Class Period and pursuant to the Registration Statements.

143. Plaintiff and the Class have sustained damages. The value of the shares of the Fund has declined substantially subsequent to and due to Defendants' violations.

144. At the times they purchased shares of the Fund, Plaintiff and other members of the Class were without knowledge of the facts concerning the wrongful conduct alleged herein. Less than one year has elapsed from the time that Plaintiff discovered or reasonably could have discovered the facts upon which this Count is based to the time of filing of the Complaint. Less than three years has elapsed between the time that the securities upon which this Count is brought were offered to the public and the time of the filing of the Complaint.

COUNT II
Violation of §12(a)(2) of the Securities Act
(Against All Defendants)

145. Plaintiff incorporates the allegations in ¶¶1-144 as though fully set forth herein.

146. This Count is brought pursuant to §12(a)(2) of the Securities Act on behalf of Plaintiff and the Class against all Defendants.

147. Defendants were sellers and offerors and/or solicitors of purchasers of the shares of the Fund offered pursuant to the Registration Statements, Prospectuses and other Offering Materials and were motivated by a desire to serve their own financial interests or those of the Fund or the Advisor.

148. The Offering Materials contained untrue statements of material fact, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein. The Advisor, the Individual Defendants', and the Distributor's actions of solicitation included participating in the preparation of the false and misleading Offering Materials and participating in marketing the shares of the Fund to investors.

149. Defendants owed to the purchasers of Fund shares, including Plaintiff and other Class members, the duty to make a reasonable and diligent investigation of the statements contained in the Offering Materials and corresponding supplements and amendments to ensure that such statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. Defendants, in the exercise of reasonable care, should have known of the misstatements and omissions contained in the Offering Materials as set forth above.

150. Plaintiff and the other members of the Class purchased or otherwise acquired shares of the Fund pursuant to the defective Offering Materials. Plaintiff did not know, nor in the exercise of reasonable diligence could she have known, of the untruths and omissions contained in the Offering Materials for the Funds.

151. By reason of the conduct alleged herein, Defendants violated, and/or controlled a person who violated, §12(a)(2) of the Securities Act. Accordingly, Plaintiff and members of the Class who hold shares of the Fund have the right to rescind and recover the consideration paid for their shares of the Fund and hereby elect to rescind and tender those shares to the Defendants sued herein. Plaintiff and Class members who have sold their shares of the Fund are entitled to rescissory damages.

COUNT III
Violation of §15 of the Securities Act
(Against the Advisor, Trustee and Individual Defendants)

152. Plaintiff incorporates the allegations in ¶¶1-151 as though fully set forth herein.

153. This Count is brought pursuant to §15 of the Securities Act on behalf of Plaintiff and the Class against the Advisor and the Individual Defendants.

154. Each of the Individual Defendants was a control person of the Fund by virtue of his position as a director, Trustee and/or senior officer of the Fund, the Trust or the Advisor. The

Individual Defendants each had a series of direct and/or indirect business and/or personal relationships with other Trustees, directors and/or officers and/or major shareholders of the Fund.

155. The Advisor managed and controlled the business affairs of the Fund and was a control person of the Fund. The Advisor and its directors and/or officers each had a series of direct and/or indirect business and/or personal relationships with the Trustees, directors and/or officers and/or major shareholders of the Fund.

156. Each of the Defendants named herein was each a culpable participant in the violations of §§11 and 12(a)(2) of the Securities Act alleged in Counts I and II above, based on their having signed the Registration Statements and/or having otherwise participated in the process which allowed the sale of the shares of the Fund to be successfully completed. By reason of such conduct, the Defendants named in this Count are liable pursuant to §15 of the Securities Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- A. Determining that this action is a proper class action and certifying Plaintiff as Class Representative;
- B. Awarding damages and interest;
- C. Awarding rescission and/or a rescissory measure of damages;
- D. Awarding Plaintiff's reasonable costs, including attorneys' fees; and
- E. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

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