

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940

Release No. 2569 / November 29, 2006

INVESTMENT COMPANY ACT OF 1940

Release No. 27586 / November 29, 2006

ADMINISTRATIVE PROCEEDING

File No. 3-12489

In the Matter of

**FCA CORP AND ROBERT W.
SCHARAR,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER PURSUANT TO SECTIONS 203(e)
AND 203(f) OF THE INVESTMENT
ADVISERS ACT OF 1940 AND SECTIONS
9(b) AND 9(f) OF THE INVESTMENT
COMPANY ACT OF 1940**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against FCA Corp and Robert W. Scharar (“Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (“Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds¹ that:

Summary

1. These proceedings involve registered investment adviser, FCA Corp ("FCA"), and its president, Robert W. Scharar ("Scharar"), for causing violations of borrowing limitations set forth in the registration statement applicable to the Australia-New Zealand Fund ("ANZ Fund") and the Japan Fund (collectively "the Funds"). The Funds are series of Commonwealth International Series Trust ("Commonwealth"), a registered investment company. In 2003 and 2004, Commonwealth's registration statement, as amended, contained a policy that, without shareholder approval, no Commonwealth fund was permitted to borrow money except as a temporary measure for extraordinary or emergency purposes. Under this policy, such borrowing was capped at an amount not to exceed the lesser of one-third of the value of the fund's net assets taken at market value including the amount borrowed, or 10% of its total assets, valued at cost, excluding the amount borrowed.

2. During 2003 and 2004, Scharar, who served as the president and portfolio manager of the Commonwealth funds and as the president of FCA, permitted the ANZ and Japan Funds to borrow cash from the Funds' line of credit in excess of these caps without shareholder approval. As a result, FCA and Scharar aided and abetted violations of Section 13(a) of the Investment Company Act, which prohibits a registered investment company from borrowing money except in accordance with the recitals of policy contained in its registration statement, or if authorized by the vote of a majority of its outstanding voting securities, and violated Section 34(b) of the Investment Company Act, which prohibits, among other things, making materially misleading statements in Commission filings.

Respondents

3. FCA Corp, a privately held Texas corporation based in Houston, Texas, has been registered with the Commission as an investment adviser since January 13, 1984. Throughout the relevant period, it served as the investment adviser to Commonwealth, a Massachusetts business trust that has been a registered with the Commission as an investment company since 1991. Throughout the relevant period, Commonwealth consisted of four series, including the Funds. FCA was the investment adviser to each series of Commonwealth.

4. Robert W. Scharar, age 57, resides in Houston and is the president and majority shareholder of FCA. On behalf of FCA, Scharar served as the portfolio manager of each Commonwealth fund throughout the relevant period. He also served as Commonwealth's president and as a member of its board of trustees.

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

Facts

5. Between January 1, 2003, and December 31, 2004, investors unrelated to Commonwealth, FCA, or Scharar engaged in market-timing activities involving frequent short-term purchases and redemptions of shares in the ANZ Fund and the Japan Fund. This caused the redemption rates for the ANZ and Japan Funds to increase significantly. To meet the liquidity demands of these high redemption levels, as well as the Funds' operating needs, Scharar proposed, and Commonwealth's Board of Trustees authorized, obtaining a line of credit from a bank.

6. In August 2003, Scharar entered into a revolving-credit agreement on behalf of Commonwealth with the bank that served as custodian for Commonwealth Funds ("the Bank"). Under the credit agreement, one or more of the Commonwealth Funds could borrow from the Bank at any time, as long as the aggregate amount borrowed did not exceed \$10 million. In addition to this aggregate maximum, the agreement prohibited Commonwealth from borrowing on behalf of any Fund an amount greater than that permitted by a borrowing cap in Commonwealth's fundamental investment restrictions.

7. These fundamental investment restrictions were set forth in a Statement of Additional Information ("SAI") in post-effective amendments to Commonwealth's registration statement signed by Scharar and filed with the Commission on February 28, 2003, November 21, 2003, and February 13, 2004. The fundamental investment restrictions provided that, without majority approval of its shareholders, no Commonwealth fund could borrow money, "except that as a temporary measure for extraordinary or emergency purposes it may borrow . . . an amount not to exceed the lesser of 1/3 of the value of its net assets taken at market value, at the time of the borrowing, including the amount borrowed, or 10% of its total assets valued at cost, excluding the amount borrowed." The credit agreement, which Scharar signed, incorporated an exhibit entitled "Fund Borrowing Limits," which quoted this provision from Commonwealth's fundamental investment restrictions in its entirety.

8. Under the credit agreement, the Bank was authorized to provide cash advances from the credit line to cover cash shortfalls on behalf of Commonwealth at the instruction of Scharar, two FCA employees under his supervision, or any employee or officer of the Bank. In addition, Commonwealth and FCA provided the Bank an "Authorization Letter" granting authority to the Bank's mutual-fund-services department, which was the custodian of a bank account for each Commonwealth Fund, to request advances from the credit line on behalf of the Funds. In practice, the Bank's mutual-fund-services department processed these advances as needed pursuant to the Authorization Letter and applied cash to repay the loans once cash became available.

9. Under the Authorization Letter, which Scharar signed on behalf of both Commonwealth and FCA, these entities expressly retained responsibility for ensuring that any borrowing from the credit line complied with, among other things, the borrowing cap in Commonwealth's fundamental investment restrictions. Each Fund also agreed to promptly inform the Bank from time to time of "any applicable limitations, restrictions and/or prohibitions on borrowings by the particular Fund." As portfolio manager to the ANZ and Japan Funds, Scharar monitored the Funds' credit-line borrowing.

10. To fulfill frequent short-term redemptions, the ANZ and Japan Funds regularly borrowed funds from the Bank line of credit. The amounts borrowed by Commonwealth for the Funds under this line of credit exceeded the borrowing limits, on a regular basis. For example, on September 18, 2003, the ANZ Fund had already borrowed an amount equal to 36% of its total assets, excluding the amount borrowed, thereby exceeding the borrowing cap. On September 25, 2003, the first time the Japan Fund used the credit line, it borrowed an amount equal to 24% of its total assets, excluding the amount borrowed, likewise exceeding the borrowing cap.

11. Altogether, the ANZ Fund carried a credit-line balance exceeding 10% of its total assets on 63 days from September 2003 through December 2004. On 17 of these days, the credit-line balance exceeded 20% of the Fund's total assets. Likewise, the Japan Fund carried a credit-line balance exceeding 10% of its total assets on 115 days during the same period. On 31 of these days, the credit-line balance met or exceeded 50%, and on one occasion 91%, of the Japan Fund's total assets, excluding the amount borrowed.² On multiple occasions, each fund borrowed more money even though its credit-line balance already exceeded the amount permitted under the borrowing cap. The Bank was not informed that the borrowing exceeded the borrowing cap.

12. Moreover, the Funds carried a credit-line balance nearly every other day throughout the relevant period. Thus, borrowing under the credit line became a regular aspect of the Funds' operations. Under the circumstances, the Funds did not borrow solely as a temporary measure for extraordinary or emergency purposes as required under the fundamental investment restrictions. During the relevant period, no shareholder vote was sought with respect to the borrowing in either the ANZ Fund or the Japan Fund.

13. Borrowing in excess of the Funds' borrowing limitations during 2003 and 2004 caused the Japan Fund and ANZ Fund to incur additional interest costs in the amounts of \$11,875 and \$5,531, respectively, which FCA has since paid to the Funds plus interest.

Violations

14. As a result of the above-described conduct, Respondents FCA and Scharar willfully³ aided and abetted and caused Commonwealth's violations of Section 13(a)(2) of the Investment Company Act, which prohibits any registered investment company from, among other things, borrowing money except in accordance with the recitals of policy contained in its registration statement, unless authorized by the vote of a majority of its outstanding voting securities.

15. As a result of the above-described conduct, Respondents FCA and Scharar willfully violated Section 34(b) of the Investment Company Act, which, among other things, provides that, in any registration statement, application, report, account, record, or other document filed or

² The Japan Fund also borrowed in excess of one-third the value of its net assets 65 times during this period. On 32 of these occasions, the amount borrowed met or exceeded 50%, and on one occasion 92%, of the Fund's net assets. On the other hand, because the ANZ Fund was much larger, its borrowing never exceeded one-third the value of its net assets.

³ "Willfully" as used in this Order means intentionally committing the act which constitutes the violation. See *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). There is no requirement that the actor also be aware that he or she is violating one of the Rules or Acts.

transmitted pursuant to the Investment Company Act, it shall be unlawful for any person so filing or transmitting any such document to omit to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading.

Respondent's Remedial Efforts

16. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offer. Accordingly, pursuant to Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940, it is hereby ORDERED that:

- A. Respondents FCA and Scharar are censured;
- B. Respondents FCA and Scharar cease and desist from committing or causing any violations and any future violations of Section 34(b) of the Investment Company Act and from causing any violations and any future violations of Section 13(a)(2) of the Investment Company Act;
- C. Respondent Scharar shall, within ten days of the entry of the Order pay a civil money penalty in the amount of \$25,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check, or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312; and (D) submitted under cover letter that identifies Scharar as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Rose Romero, Fort Worth Office, Securities and Exchange Commission, Burnett Plaza, Suite 1900, 801 Cherry Street, Unit #18, Fort Worth, Texas 76102-6882;
- D. Respondent FCA shall, within ten days of the entry of the Order, pay a civil money penalty in the amount of \$25,000 to the United States Treasury. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check, or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312; and (D) submitted under cover letter that identifies FCA as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Rose Romero, Fort Worth Office, Securities and Exchange Commission, Burnett Plaza, Suite 1900, 801 Cherry Street, Unit #18, Fort Worth, Texas 76102-6882.

By the Commission.

Nancy M. Morris
Secretary