UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2548 / September 7, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12412

In the Matter of

GARTMORE MUTUAL FUND CAPITAL TRUST,

Respondent.

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(k) OF THE INVESTMENT ADVISERS 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(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Gartmore Mutual Fund Capital Trust ("Gartmore" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, Respondent consents 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(k) of the Investment Advisers Act of 1940 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

RESPONDENT

1. Gartmore, a Delaware business trust, headquartered in Conshohocken, Pennsylvania, has been registered as an investment adviser with the Commission since March 18, 1999. Gartmore provides investment advisory services to the Gartmore GVIT U.S. Growth Leaders Fund, and the Gartmore U.S. Growth Leaders Fund (collectively, the "Gartmore Funds" or "the Funds" and each a "Fund").

SUMMARY

2. On June 30, 2000, Gartmore U.S. Growth Leaders Fund began operations under an advisory contract with Gartmore that provided for compensation on the basis of a share of capital gains upon or capital appreciation of the assets of that Fund. Gartmore GVIT U.S. Growth Leaders Fund began operations under a similar advisory contract with Gartmore on December 18, 2001. From the implementation of those agreements through August 2004 (the "relevant period"), Gartmore collected compensation based on each Fund's average net asset value for the quarter following the performance period in violation of Section 205 of the Advisers Act, as discussed below. Gartmore charged the Gartmore Funds approximately $632,000 more in the aggregate than it would have if it had complied with Section 205 of the Advisers Act.

Performance-Based Compensation under Section 205 of the Advisers Act

3. Section 205 of the Advisers Act generally prohibits investment advisers, unless exempt from registration under Section 203(b) of the Advisers Act, from entering into advisory contracts that provide for compensation based on a share of capital gains upon, or capital appreciation of, the assets (or any portion of the assets) of a client ("performance-based compensation" or "total fee"), except as provided in Section 205(b) of the Advisers Act.

4. Under Section 205(b)(2) of the Advisers Act, an investment adviser may enter into an advisory contract with a registered investment company that provides for performance-based compensation that: (i) increases and decreases proportionately with the investment performance of the company or fund over a specified period in relation to the investment record of an appropriate index of securities prices; and (ii) is based on the asset value of the company or fund, "averaged over a specified period."

5. Rule 205-2(b) under the Advisers Act defines the "specified period" over which the asset value of the company or fund under management is averaged as the "period over which the investment performance of the company or fund and the investment record of an appropriate index of securities prices . . . are computed."[1] For example, if an advisory contract specifies that the fund's performance will be measured against the performance of the S&P 500 index over a 36-month period, then the adviser's performance-based compensation must be assessed against the asset value of the fund averaged over the same 36-month period.

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[1] Advisers Act Rule 205-2(b); *see* Adoption of Rule 205-2 under the Investment Advisers Act of 1940, As Amended, Definition of "Specified Period" Over Which Asset Value of Company or Fund Under Management is Averaged, Advisers Act Release No. 347 (Nov. 10, 1972) (stating that the performance-related portion of the fee must be assessed against the assets averaged over the same period over which performance was computed).

6. Rule 205-2(c) provides a conditioned exemption from Rule 205-2(b). Under this exemption, an advisory contract providing for performance-based compensation may use a "fulcrum fee,"[2] for which the "specified period" over which the asset value of the company or fund under management is averaged may differ from the period over which the asset value is averaged for computing the performance-related portion of the fee, only if:

(a) the performance-related portion of the fee is computed over a rolling period[3] and the total fee is payable at the end of each subperiod of the rolling period; and

(b) the fulcrum fee is computed based on the asset value averaged over the most recent subperiod or subperiods of the rolling period.[4]

For the purposes of Rule 205-2(c), the rolling period must be the same as the period over which performance is measured. Thus, for example, under the exemption provided by Rule 205-2(c), an advisory contract could provide for performance-based compensation that uses a fulcrum fee (calculated by applying a fulcrum-fee rate to the asset value averaged over the most recent subperiod or subperiods of a 36-month rolling period (*e.g.*, the most recent month or three months (a quarter)), as adjusted by the performance-related portion of the fee (calculated by applying a performance-adjustment rate to the asset value of the fund averaged over the entire 36-month rolling period).

7. These provisions are designed to link an adviser's performance-based compensation to the fund's investment performance and thereby prevent performance-based compensation from being influenced unduly by the amount of sales or redemptions in the fund over a shorter period.[5]

FACTS

Gartmore's Method for Computing Its Total Fee

8. During the relevant period, Gartmore charged the Gartmore Funds performance-based compensation under advisory contracts that had been negotiated with the Funds and approved by the Funds' Boards of Trustees. Gartmore calculated its total fee by applying the total-fee rate (comprised of a fulcrum-fee rate adjusted by a performance-adjustment rate) ("total-fee rate") against each Fund's average net asset value for the quarter following the performance period, as defined below, instead of against the Fund's average asset value over its performance

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[2] Rule 205-2(a)(1) defines fulcrum fee to be the "fee which is paid or earned when the investment company's performance is equivalent to that of the index or other measure of performance."

[3] Rule 205-2(a)(2) defines rolling period to be "a period consisting of a specified number of subperiods of definite length in which the most recent subperiod is substituted for the earliest subperiod as time passes." Thus, an advisory contract providing for a 36-month rolling period would be based on a rolling period consisting of 36 one-month subperiods.

[4] Rule 205-2(c).

[5] *See* Factors To Be Considered in Connection With Investment Company Advisory Contracts Containing Incentive Fee Arrangements, Investment Company Act Release No. 7113 (April 6, 1972).

period. Consequently, Gartmore did not calculate its total fee consistent with either Rule 205-2(b) or 205-2(c).

9. Specifically, under the advisory contracts, Gartmore charged each Fund a fulcrum-fee rate of .90%, .80%, or .75%, depending on asset levels in the Fund during the relevant period. The performance-adjustment rate provided that if the Fund outperformed or underperformed its benchmark index by 1200 basis points, the fulcrum-fee rate would increase or decrease by 22 basis points on the first $500 million of assets, by 18 basis points from $500 million to $2 billion of assets, and by 16 basis points above $2 billion in assets. The advisory contracts provided that each Fund's performance would be measured against the performance of a specified external index over a 36-month rolling period ("performance period"). The advisory contracts did not specify the period over which each Fund's assets were to be averaged for purposes of calculating the total fee.

10. The Gartmore Funds' asset value generally increased during the relevant period so that each Fund's average net asset value for the quarter following the performance period was generally higher than the value of its assets averaged over the performance period. Given that Gartmore applied the total-fee rate to each Fund's average net asset value for the quarter following the performance period, rather than to the Funds' net asset value averaged over the performance period, Gartmore received performance-based compensation significantly higher than it would have received if it had calculated the total fee in accordance with Section 205 and Rule 205-2 of the Advisers Act. Consequently, Gartmore overcharged the Gartmore Funds by approximately $632,000 during the relevant period.

11. Upon notification by the Commission staff that Gartmore was charging the Gartmore Funds a total fee based on a method that did not comply with Section 205 of the Advisers Act, Gartmore's management discontinued the method and subsequently reimbursed the Funds plus interest in the aggregate amount of $21,665, for a total payment of $653,882. The Board of Trustees of each Fund approved the repaid amount.

Violation

12. As a result of the conduct described above, Respondent willfully[6] violated Section 205(a) of the Advisers Act, which prohibits an investment adviser from entering into or performing an advisory contract with a registered investment company that provides for performance-based compensation unless, pursuant to Section 205(b) of the Advisers Act, the contract provides for performance-based compensation based on the asset value of the fund averaged over a specified period and increasing and decreasing proportionately with the investment performance of the fund over a specified period in relation to the investment record of an appropriate index of securities prices.

[6] "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 is violating one of the Rules or Acts.

Respondent's Remedial Efforts

13. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent 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 the Respondent's Offer of Settlement. Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent is censured.

B. Respondent shall cease and desist from committing or causing any violations and any future violations of Section 205(a) of the Advisers Act.

By the Commission.

Nancy M. Morris
Secretary