

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98619 / September 28, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21762

In the Matter of

SALOMON WHITNEY LLC,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS, PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Salomon Whitney LLC (“SW Financial” or “Respondent” or the “Firm”).

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 Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that

Summary

1. From at least August 2018 through June 2022 ("the Relevant Period"), the registered broker-dealer SW Financial, through several of its registered representatives, recommended a short-term, high-volume investment strategy to at least sixteen of its customers without a reasonable basis. Specifically, these registered representatives recommended and executed over 2,000 trades in these customers' accounts ("the Affected Accounts") during the Relevant Period without regard for the high transaction costs incurred by the customers. As a result of this high volume of recommended transactions and their attendant commissions and fees, it would have been virtually impossible for these customers to achieve a profit in their accounts. While these customers were left with aggregate losses in the Affected Accounts exceeding \$1,000,000 for the relevant trading periods, the Firm and these registered representatives collectively received over \$660,000 in commissions and fees as a result of the excessive trading they recommended. Through this conduct, SW Financial violated Sections 17(a)(1) and (3) of the Securities Act, Exchange Act Section 10(b) and Rules 10b-5(a) and (c) during the Relevant Period, and the Care Obligation of Regulation Best Interest (Exchange Act Rule 15c-1 or "Reg BI") from June 30, 2020, the compliance date for Reg BI, through June 2022 ("the Reg BI Period").

2. SW Financial also violated Reg BI's Compliance Obligation by failing to establish, maintain and enforce policies and procedures reasonably designed to achieve compliance with Reg BI's Care Obligation concerning excessive trading during the Reg BI Period.

Respondent

3. **Salomon Whitney LLC**, a New York limited liability company with its former principal place of business in Melville, New York, has been registered with the Commission as a broker-dealer since 2008. On May 12, 2023, the Firm was expelled from FINRA membership pursuant to a settlement with FINRA finding that the firm willfully violated Section 10(b) of the Exchange Act and Rules 10b-5 and 15c-1(a)(1) thereunder for conduct unrelated to that described herein. The Firm filed a Form BD-W with the Commission in May 2023, but this withdrawal has not yet become effective. During the Relevant Period, the Firm had more than 1,500 retail customer accounts. According to information filed with the Commission, the Firm had revenue of approximately \$800,000 and a net loss of \$251,523 for the quarter ending March 31, 2023.

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

Facts

SW Financial's Series of Recommendations with No Reasonable Basis

4. It is a violation of Sections 17(a)(1) and (3) of the Securities Act to “employ any device, scheme, or artifice to defraud” or “engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser” in the offer or sale of securities. It is a violation of Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder to “employ any device, scheme, or artifice to defraud” or “engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person” in connection with the purchase or sale of any security.

5. A broker has a duty to have a reasonable basis for its trade recommendations. *See SEC v. Hasho*, 784 F. Supp. 1059, 1107 (S.D.N.Y. 1992) (“By making a recommendation, a securities dealer implicitly represents to a buyer of securities that he has an adequate basis for the recommendation.”) Under this duty, a registered representative who recommends a particular trading strategy, including a strategy of high-cost in-and-out trading, must have a reasonable basis for believing the strategy is suitable for at least some customers. *See SEC v. Fowler*, 6 F.4th 255, 262-63 (2d Cir. 2021).

6. Reg BI's Care Obligation requires a broker-dealer or its associated person, when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer, to have a reasonable basis to believe that a series of recommended transactions, even if in the retail customer's best interest when viewed in isolation, is not excessive and is in the customer's best interest when taken together in light of the retail customer's investment profile and does not place the financial or other interest of the broker-dealer or its associated person ahead of the interest of the retail customer. Exchange Act Rule 15l-1(a)(2)(ii)(C).

7. During the Relevant Period, and including the Reg BI Period, SW Financial, through five of its registered representatives, recommended a short-term, high-volume investment strategy to at least sixteen of its retail customers without a reasonable basis. These registered representatives recommended rapid buying and selling of securities, most commonly equities, in the retail customers' brokerage accounts, often including a purchase, sale, and then subsequent repurchase of the same stock in the same week, or even on the same or consecutive days.

8. The extremely high cost-to-equity ratio and annual turnover rates for these customer accounts indicate the excessive trading in these accounts during the Relevant Period as a result of these registered representatives' recommendations. The cost-to-equity ratio is the rate of return required for an account to break even, taking into account the costs, such as commissions and other fees associated with the trading in the account. The annual turnover ratio represents the total value of annual purchases made in the account divided by the account's average monthly balance. A cost-to-equity ratio of 20% or higher and an annual turnover ratio of six are thresholds that have been regarded as indicative of excessive trading. *See, e.g., Daniel*

R. Howard, Exch. Act Rel. No. 46269, 2002 WL 1729157, at *3 (July 26, 2002) (Commission Opinion) (“While there is no definitive turnover rate or cost-to-equity ratio that establishes excessive trading, a turnover rate of 6 or a cost-to-equity ratio in excess of 20% generally indicates that excessive trading has occurred.”), *aff’d*, *Howard v. SEC*, 77 F. App’x 2 (1st Cir. 2003); *Arceneux v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 767 F.2d 1498, 1502 (11th Cir. 1985) (acknowledging that “courts which have addressed this issue have indicated that an annual turnover rate in excess of six reflects excessive trading”).

9. The cost-to-equity ratio for many of the Affected Accounts exceeded 100%, meaning that a customer would need a return of over 100% in the investments in his or her account just to pay the commissions and fees charged by SW Financial, making it virtually impossible for the customer to make a profit. The high annual turnover rate in the Affected Accounts, exceeding 60 for several accounts, further demonstrates the very high rate of trading recommended by these SW Financial registered representatives.

10. Aggregate customer losses exceeded \$1,000,000 as a result of these trade recommendations during the Relevant Period. While the customers suffered losses from the excessive trading recommended by the Firm in their accounts, the Firm and the registered representatives for the Affected Accounts benefited significantly from their trade recommendations, reaping over \$660,000 in commissions and fees from these trades.

11. Neither the fact that these retail customers’ profiles may have included an investment objective of “speculation” nor that the customers acknowledged letters regarding their registered representatives’ active trading in their accounts relieve SW Financial of its duty of care with respect to their recommendations. “Where a retail customer expresses a desire for ‘active trading,’ a broker-dealer may take this factor into consideration when evaluating a recommendation; however, the broker-dealer will nevertheless need to reasonably believe that a series of recommended transactions is in the best interest of the retail customer.” Regulation Best Interest: The Broker-Dealer Standard of Conduct, Exchange Act Release No. 86031, 84 FR 33318, 33384 (June 5, 2019). As described above, the strategy recommended by these registered representatives made it virtually impossible for these customers to generate a profit in their accounts and was not in their best interest.

12. SW Financial and these registered representatives knowingly or recklessly disregarded the fact that the high-cost pattern of frequent trading they recommended for these customer accounts had virtually no chance of generating any profit.

SW Financial’s Failure to Establish, Maintain and Enforce Written Policies and Procedures Reasonably Designed to Achieve Compliance with Reg BI

13. Reg BI’s Compliance Obligation requires broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI. Exchange Act Rule 15l-1(a)(2)(iv). These policies and procedures must address, among other things, compliance with the broker-dealer’s Care Obligation.

14. SW Financial failed to establish, maintain and enforce written policies and

procedures reasonably designed to achieve compliance with Reg BI's Care Obligation during the Reg BI Period. While the firm's Written Supervisory Procedures ("WSPs") during this time period recited the language of this Care Obligation, the only substantive policies and procedures in place at the Firm during the Reg BI Period, beyond the WSPs' recitation of Reg BI and a periodic review of active account reports, that attempted to address the Care Obligation with respect to excessive series of trade recommendations concerned "active trade letters" to be sent to customers.

15. Specifically, according to the WSPs, if the Firm learned about active trading in a customer's account, the Firm could, but was not required to, send "active trade letters" to customers explaining that their accounts had been actively traded. The Firm's active trade letter procedures were not reasonably designed to achieve compliance with Reg BI's Care Obligation. Specifically, these procedures were not reasonably designed to prevent excessive trading, but rather served to alert customers about excessive trading after the fact. The firm sent over 260 active account letters to SW Financial customers during the Reg BI Period, including customers of the five registered representatives whose recommendations described above violated Reg BI's Care Obligation. Nonetheless, these representatives continued to recommend this short-term, high-volume strategy without a reasonable basis.

Violations

Violations of Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b-5

16. As a result of the conduct described above, during the Relevant Period, SW Financial willfully violated Sections 17(a)(1) and 17(a)(3) of the Securities Act and Section 10(b) of the Exchange Act, and Rules 10b-5(a) and (c) thereunder.

Violations of Reg BI's Care and Compliance Obligations

17. As a result of the conduct described above, during the Reg BI Period, SW Financial willfully violated Reg BI's Care Obligation and Compliance Obligation. Exchange Act Rule 15c-1.

Disgorgement

18. The disgorgement and prejudgment interest ordered in paragraph IV.B is consistent with equitable principles and does not exceed Respondent's net profits from its violations, and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid pursuant to paragraph IV.B in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to

impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent is censured.

B. Respondent shall, within 14 days of the entry of this Order, pay disgorgement of \$216,896 and prejudgment interest of \$19,277 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Salomon Whitney LLC as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Tejal Shah, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004.

By the Commission.

Vanessa A. Countryman
Secretary