

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78189 / June 28, 2016

INVESTMENT ADVISERS ACT OF 1940
Release No. 4441 / June 28, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17320

In the Matter of

WFG ADVISORS, L.P.,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 203(e) AND
203(k) OF THE INVESTMENT ADVISERS
ACT OF 1940 AND SECTION 15(b)(6) OF
THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) and Section 15(b)(6) of the Securities Exchange Act of 1934 (“Exchange Act”) against WFG Advisors, L.P. (“WFGA” 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 contained in the Order, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 and Section 15(b)(6) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

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

Summary

1. This matter arises from improper fee and trading practices and related compliance and reporting failures at WFG Advisors, L.P. ("WFGA"), a registered investment adviser.

2. WFGA overcharged clients in one of its advisory wrap account programs contrary to its disclosures to these clients. WFGA represented to clients participating in a wrap account program that they would be charged a commission in connection with the purchase of interests in certain alternative investment products, but that the wrap account advisory fee would not be assessed on the value of such interests. Contrary to these disclosures, from at least January 2011 through August 2013, WFGA in certain instances improperly charged its clients both the commission and the advisory fee in connection with these clients' purchases of interests in alternative investment products. In addition, WFGA falsely stated in its Forms ADV Part 2 and Wrap Fee Program Brochures filed with the Commission that clients participating in its wrap account program would not be charged commissions in connection with transactions in their accounts.

3. From February 2011 through May 2014, WFGA engaged in securities transactions with its advisory clients on a principal basis through its affiliated broker-dealer, without providing prior written disclosure to, or obtaining consent from, the clients.

4. WFGA failed to adopt policies and procedures reasonably designed to ensure that its advisory clients' fees were calculated as represented, and failed to implement its policies regarding appropriate disclosure to and consent from its clients to transactions effected on a principal basis.

Respondent

5. WFG Advisors, L.P. is a Texas limited partnership based in Dallas, Texas with branch offices throughout the United States. WFGA has been registered with the Commission as an investment adviser since 2003. WFGA's advisory business has \$1.465 billion in regulatory assets under management held primarily in separately managed client accounts of 9,918 clients.

Other Relevant Entity

6. WFG Investments, Inc. ("WFGI") is a Texas corporation based in Dallas, Texas. WFGI has been a Commission-registered broker-dealer since 1988. WFGI is under common ownership with WFGA.

Facts

A. WFGA Overcharged Clients Advisory Fees and Had Inadequate Policies and Procedures to Prevent and Detect Such Overcharges

7. Since at least January 2011, WFGA, through its investment adviser representatives (“IARs”), has offered advisory retail clients several investment programs. One such program is the “Select” wrap fee account program, pursuant to which a client typically vests his or her IAR with discretionary trading authority and pays an advisory fee that is assessed based on the amount of assets each client holds in his or her account.

8. Since at least January 2011, WFGA IARs recommended to Select program advisory clients certain alternative investment products, primarily consisting of interests in Real Estate Investment Trusts (“REITs”) and Business Development Companies (“BDCs”). Certain REITs and BDCs that WFGA recommended to Select program clients enabled WFGA’s clients to choose from among two purchase options. The clients could (i) purchase the applicable REIT or BDC security on a commission basis, with a portion of the purchase price of the security being applied towards a commission;¹ or (ii) purchase the security on a net of commission basis, whereby no commissions are deducted out of the purchase price, and the entire investment amount is applied towards the purchase of interests in the REIT or BDC. If clients purchased the security on a net of commission basis, then advisory fees would be assessed on the value of the account assets including these investments.

9. Between January 2011 and August 2013, it was common for WFGA IARs to effect transactions in REITs and BDCs in Select program accounts on a commission basis when this option was authorized by the client. During this time period, when Select program clients purchased interests in a REIT or BDC on a commission basis, WFGA, through its IARs, represented to clients, at times in writing and at other times verbally, that WFGA would not assess advisory fees on the value of that investment held in their wrap account.

10. Contrary to these representations, from January 2011 through 2013, WFGA assessed certain Select program clients advisory fees based on the value of the REIT or BDC investments such clients had purchased on a commission basis. These billing errors resulted in WFGA overcharging 35 client accounts a total of \$34,640.63 in advisory fees during this time period.

11. These overcharges, and WFGA’s failure to detect them, occurred because WFGA lacked policies and procedures reasonably designed to ensure that billing in Select program accounts was accurate and that any billing errors were promptly detected. While WFGA’s compliance manual adopted pursuant to Rule 206(4)-7 under the Advisers Act contained a generic directive requiring that advisory fees charged in client accounts be reconciled consistent with representations to clients, WFGA did not adopt or implement any specific procedures as to the manner in which such reconciliation was to be carried out.

¹ These commissions were paid to WFGA’s affiliated broker-dealer, WFGI, and shared with the WFGA IARs, nearly all of whom were also registered representatives of WFGI.

12. Moreover, between at least January 2011 and August 2013, WFGA's compliance department, which, pursuant to the compliance manual, was responsible for account billing reconciliation, did not have sufficient staff to address day-to-day compliance or account monitoring needs. WFGA also did not have the technological capability to prevent or detect the overcharges in Select program accounts. To monitor activity in client accounts, including billing accuracy, WFGA relied on random account sampling conducted manually by its staff. However, WFGA did not have policies and procedures directing the manner or frequency of such sampling reviews. This manual process failed to prevent and detect overcharges of advisory fees in Select program accounts.

13. WFGA was aware of the risk that its policies and procedures were not adequate to prevent or detect overcharges of advisory fees. In a risk assessment conducted in November 2011, a compliance consultant WFGA retained to assess its compliance program identified the risk that advisory fees may not be computed accurately or tested. The compliance consultant also noted that follow-up work was required to be performed in this area. In an assessment conducted in February 2013, the same compliance consultant identified the same risks and again noted the need for follow-up work to be performed in the area of advisory fee computation and testing. Despite the 2011 and 2013 risk assessments, WFGA failed to perform follow-up work or to adopt or implement policies and procedures reasonably designed to ensure that it calculated clients' advisory fees in a manner consistent with disclosures to clients, and that it promptly detected any advisory fee billing errors that did occur.

B. WFGA Engaged in Principal Transactions without Making Required Disclosures and Obtaining Client Consent

14. From at least February 2011 through May 2014, WFGA, through its affiliated broker-dealer WFGI, engaged in principal transactions without making written disclosure and obtaining client consent. During this time period, WFGA engaged in at least 123 principal transactions in 27 client accounts. WFGI received \$19,251.25 in sales credits in connection with WFGA's transactions. With respect to each such transaction, WFGA purchased corporate bonds through WFGI on behalf of WFGA's advisory clients. In each such transaction, the bonds WFGA purchased were from WFGI's own inventory.

15. WFGA did not provide written disclosures to, or obtain consent from, its advisory clients before completing each of the principal transactions identified above. WFGA's compliance manual in effect during this time period included policies and procedures for such transactions under Section 206(3) of the Advisers Act, but WFGA did not implement these policies and procedures with respect to the principal transactions identified above.

C. WFGA Made Materially Untrue Statements in Reports Filed with the Commission

16. In Forms ADV Part 2 that WFGA filed with the Commission on March 31, 2011, September 15, 2012, and September 28, 2013, WFGA stated in Item 10 of each Form that Select

program clients would not be charged commissions for transactions in their accounts. In Wrap Fee Program Brochures that WFGA filed with the Commission on March 31, 2011, September 15, 2012, and September 28, 2013, WFGA stated in Item 9 of each Brochure that Select program clients would not be charged commissions for transactions in their accounts.

17. Contrary to these disclosures, from at least January 2011 through September 29, 2014, it was common for WFGA to charge Select program clients commissions in connection with certain transactions involving REITs and BDCs in the Select program accounts when that option was authorized by the client.

Violations

18. As a result of the conduct described above relating to overcharges of advisory fees, WFGA willfully² violated Section 206(2) of the Advisers Act, which prohibits investment advisers from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

19. As a result of the conduct described above relating to principal transactions, WFGA willfully violated Section 206(3) of the Advisers Act, which prohibits an investment adviser from executing securities transactions with a client on a principal basis without disclosing to such client in writing, before the completion of such transaction, the capacity in which it is acting and obtaining the consent of the client to such transaction.

20. As a result of WFGA's representations regarding commissions charges in Select program in Part 2 of its Forms ADV filed with the Commission in 2011, 2012, and 2013 and Wrap Fee Program Brochure filed with the Commission in the same years, WFGA willfully violated Section 207 of the Advisers Act, which makes it unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission, or willfully omit to state in any such application or report any material fact which is required to be stated therein.

21. WFGA also willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which requires that an investment adviser adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and rules thereunder by the adviser and its supervised persons.

Remedial Efforts

22. Subsequent to an examination conducted by the Commission staff in 2013 in which the staff brought to WFGA's attention instances of fee overcharges in Select program accounts and of principal transactions lacking disclosure or consent, WFGA initiated a review of transactions in

² A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

its Select program accounts. As a result of this review, WFGA identified client accounts that were overcharged advisory fees due to the conduct described above, and refunded these accounts in the amount of the overcharged advisory fees (\$34,640.63). Also as a result of this review, WFGA identified accounts of clients with whom WFGA traded on a principal basis without requisite disclosure and consent, and refunded these accounts the amount of the sales credits charged in connection with the principal transactions (\$19,251.25). In addition, WFGA retained an unaffiliated compliance consultant different from the consultant who prepared the risk assessments referenced in Paragraph 13 to review its policies and procedures related to fee billing, principal transactions, and disclosure to clients. In determining to accept the Offer, the Commission considered the remedial acts undertaken by WFGA and the cooperation WFGA afforded the Commission staff.

Undertakings

Respondent has undertaken to:

23. Notice to Advisory Clients. Within thirty (30) days of the entry of this Order, WFGA shall provide a copy of the Order to each of WFGA's existing advisory clients participating in the Select program via mail, email, or such other method as may be acceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff. Furthermore, for a period of twelve (12) months from the entry of this Order, to the extent that WFGA is required to deliver a brochure to a client and/or prospective client pursuant to Rule 204-3 of the Advisers Act, the brochure shall provide notice of the entry of this Order, contain a URL where the Order can be viewed, and provide the client or prospective client the opportunity to request a copy of the Order. Within seven (7) days of such a request, WFGA shall deliver a copy of the Order to the client or prospective client.

24. Certification of Compliance by WFGA. WFGA shall certify, in writing, compliance with the undertaking in Paragraph 23 according to the timelines set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and WFGA agrees to provide such evidence. The certification and supporting material shall be submitted to Anthony S. Kelly, Co-Chief, Asset Management Unit, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act and Section 15(b)(6) of the Exchange Act, it is hereby ORDERED that:

A. WFGA cease and desist from committing or causing any violations and any future violations of Sections 206(2), 206(3), 206(4), and 207 of the Advisers Act and Rule 206(4)-7 thereunder.

B. WFGA is censured.

C. WFGA shall, within ten (10) days of entry of this Order, pay a civil money penalty in the amount of \$100,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. 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. Respondents 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. Respondents 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 WFGA 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 Anthony S. Kelly, Co-Chief, Asset Management Unit, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

D. Respondent WFGA shall comply with the undertakings enumerated in paragraphs 23-24 of this Order.

E. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, WFGA agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of WFGA's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, WFGA agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the

Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against WFGA by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields
Secretary