

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9437 / July 31, 2013

SECURITIES EXCHANGE ACT OF 1934
Release No. 70086 / July 31, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3639 / July 31, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15401

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In the Matter of	:	ORDER INSTITUTING ADMINISTRATIVE
	:	AND CEASE-AND-DESIST PROCEEDINGS
ABN AMRO Bank, N.V.	:	PURSUANT TO SECTION 8A OF THE
	:	SECURITIES ACT OF 1933, SECTIONS 15(b)
Respondent.	:	AND 21C OF THE SECURITIES EXCHANGE
	:	ACT OF 1934, AND SECTIONS 203(e) AND
	:	203(k) OF THE INVESTMENT ADVISERS ACT
	:	OF 1940, 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 Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against ABN AMRO Bank, N.V. (“Respondent” or “ABN”).

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, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, 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

Since at least 2004, in violation of Section 15(a) of the Exchange Act and Section 203(a) of the Advisers Act, ABN and certain of its retail and private banking affiliates, predominantly in The Netherlands, France and Switzerland, regularly solicited, effected transactions in securities with and for, and, for compensation, provided investment advice to, persons in the United States, without being registered with the Commission as a broker-dealer or investment adviser, and without qualifying for an exception or exemption from registration. In addition, ABN violated Sections 5(a) and 5(c) of the Securities Act by engaging in transactions that were not registered in the United States and that did not qualify for an exemption from registration under the Securities Act. ABN became aware of this conduct in 2004, but failed to address it adequately, and did not voluntarily report until 2008.

Respondent

ABN AMRO Bank N.V., at the commencement of the conduct described herein, was an international banking group organized under Dutch law, offering banking products and financial services, including regularly effecting transactions in securities for the account of others, and, as part of its regular business, buying and selling securities for its own account, in 56 countries and territories on six continents. In October 2007, ABN was acquired by a consortium of Fortis N.V. and Fortis SA/NV ("Fortis"), the Royal Bank of Scotland Group plc ("RBS"), and Banco Santander S.A. ("Santander"). In October 2008, the Dutch government bought Fortis Bank (Nederland) N.V., including its interests in ABN, and in December 2008, replaced Fortis as a stakeholder in RFS Holdings, the entity that managed ABN. ABN's various businesses around the globe have been separated from ABN and integrated in line with each of the new respective owners. The operations directly involved in the violations here have been assumed by the Dutch Central Bank.

Background

1. Since at least 2004, ABN and certain of its retail and private banking affiliates, predominantly in The Netherlands, France and Switzerland, provided securities transactional and

advisory services to 5,527 accounts in the United States (“U.S. Persons”) holding approximately €792 million (\$966 million at an exchange rate of \$1.22) and solicited transactions in a number of those accounts through telephonic contacts and correspondence. Although ABN was soliciting, and regularly effecting transactions in securities with and for U.S. Persons, it did not register in the United States as a broker-dealer. Nor did it satisfy the conditions for an exemption from broker-dealer registration for foreign broker-dealers pursuant to Rule 15a-6 under the Exchange Act.

2. In addition, ABN, for compensation, engaged in the business of advising U.S. Persons as to the advisability of investing in, purchasing, or selling securities, without registering as an investment adviser under the Advisers Act. ABN acted as an investment adviser for its fee-based advisory accounts with U.S. Persons by providing investment advice, making investment decisions for its customers, and/or recommending the investment in or sale of securities, via telephone calls or mailings into the United States. ABN has never been registered with the Commission as an investment adviser and was neither exempted nor prohibited from registration.

3. Most of the relevant accounts were held by existing foreign brokerage clients of ABN who continued to receive brokerage and investment advice services after moving to the United States on a non-temporary basis, as well as by persons who maintained a primary residence in the United States but opened an account with an ABN foreign brokerage affiliate while abroad. ABN did not maintain sufficient procedures to prevent retail and private banking affiliates of ABN, predominantly in Europe, from providing non-exempt broker-dealer and investment adviser services to U.S. Persons. It appears that the ABN personnel who provided broker-dealer and investment advisory services to U.S. Persons did not know that their continued provision of services to clients who had moved to the United States on a non-temporary basis violated the U.S. securities laws.

4. “BU NL,” ABN’s primary consumer and commercial business unit in the Netherlands, and “BU PC,” ABN’s Private Client business unit in the Netherlands, Switzerland and France (the two largest ABN Private Client operations) were responsible for a majority of the registration violations at ABN. These businesses accounted for approximately 96% of the U.S. Person accounts in question. In some instances, there was no registration statement filed or in effect, nor any available exemption from registration, for securities issued or underwritten by ABN that were offered or sold to U.S. Persons.

5. ABN charged U.S. Persons commissions and other forms of transaction-related compensation, as well as special compensation for investment advice. Between 2004 and 2008, ABN received approximately \$2,943,408 in net profit from commissions and other fees from U.S. Persons.

6. As a result of the conduct described above, ABN willfully¹ violated Section 5(a) and 5(c) of the Securities Act, Section 15(a) of the Exchange Act, and Section 203(a) of the Advisers Act.

Respondent's Remedial Efforts

In determining whether to accept the Offer, the Commission considered the remedial acts that were taken by Respondent and cooperation afforded the Commission staff.

Undertakings

Respondent has undertaken to:

1. Conduct a thorough review of all Commercial and Merchant Banking investment accounts as well as all commercial investment accounts within Retail and Private Banking held at local branches of ABN to determine whether they include any U.S. Person accounts (other than such accounts for which securities may be offered or sold to U.S. Persons pursuant to available exemptions). This group of accounts was not originally included by ABN in the original U.S. Person accounts that it disclosed to the staff. ABN has already reviewed these accounts through an initial computer query but has agreed to undertake a more rigorous manual review to confirm compliance. In addition, ABN has agreed to continue its efforts to contact the owners of the "ringfenced" accounts identified above that cannot be closed due to local regulations prohibiting the closing of accounts without customer notification. ABN will also ensure that no fees are being charged on those accounts, and that business from those accounts is not being solicited.

2. Certify, in writing, within one year of the date the Order in this matter, compliance with the undertakings 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 ABN agrees that it will provide such evidence. The certification and supporting material shall be submitted to Douglas McAllister, Assistant Director, 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.

¹ 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 person "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)).

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 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

- A. Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 5(a) and 5(c) of the Securities Act, Section 15(a) of the Exchange Act, and Section 203(a) of the Advisers Act;
- B. Respondent is censured;
- C. Respondent shall comply with the undertakings enumerated above;
- D. Respondent shall, within 5 days of the entry of this Order, pay disgorgement of \$2,943,408, prejudgment interest of \$604,000, and a civil money penalty of \$2,000,000, to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 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) 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 that identifies ABN AMRO Bank N.V. 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 Gerald W. Hodgkins, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549.

By the Commission.

Elizabeth M. Murphy
Secretary