

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES AND EXCHANGE ACT OF 1934
Release No. 82244 / December 8, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4822 / December 8, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18301

In the Matter of

**AMERIPRISE FINANCIAL
SERVICES, INC.,**

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 15(b) 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 15(b) 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 Ameriprise Financial Services, Inc. (“Respondent” or “Ameriprise”).

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 and Cease-and-Desist Proceedings Pursuant to Section 15(b) of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, 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 finds¹ that:

Summary

1. This matter arises from misstatements made by registered investment adviser Ameriprise to certain of its advisory clients concerning F-Squared Investments, Inc.'s ("F-Squared") materially inflated, and hypothetical and back-tested, performance track record for its AlphaSector strategies.

2. AlphaSector strategies are sector rotation strategies based on an algorithm that yields a "signal" indicating whether to buy or sell nine industry exchange-traded funds ("ETFs") that together made up the industries in the S&P 500 Index. Between December 2010 and January 2015, Ameriprise advised clients in certain separately managed accounts to invest in certain AlphaSector strategies. Ameriprise's assets under management relating to F-Squared's AlphaSector strategies grew quickly, with assets under management increasing from approximately \$11.6 million at the end of 2010 to more than \$3.7 billion by September 30, 2013.

3. From December 2010 through October 2013, in certain client presentations, marketing materials, and other communications, Ameriprise negligently relied on misrepresentations made by F-Squared and falsely stated that: (a) the AlphaSector strategies had a history that dated back to April 2001 and had been in use since then; and (b) the track record had significantly outperformed the S&P 500 Index from April 2001 to September 2008. In fact, no F-Squared or other client assets had tracked the strategy from April 2001 through September 2008. In addition, F-Squared miscalculated the historical performance of AlphaSector from April 2001 to September 2008 by incorrectly implementing signals in advance of when such signals actually could have occurred. As a result of this inaccurate compilation of historical data by F-Squared, Ameriprise advertised the AlphaSector strategies by using hypothetical and back-tested historical performance that was inflated substantially over what performance would have been if F-Squared had applied the signals accurately.

4. Ameriprise also failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder, as required by Section 206(4) of the Advisers Act and Rule 206(4)-7. Specifically, Ameriprise failed to adopt and implement policies and procedures reasonably designed to ensure: (a) the accuracy of performance information contained in advertisements that it directly or indirectly published, circulated, or distributed where the performance information came from third-party sources and (b) the retention of books and records necessary to support the basis for performance information in advertisements directly or indirectly published, circulated, or distributed by Ameriprise.

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

5. Ameriprise likewise failed to make and keep true, accurate and current records or documents necessary to form the basis for or demonstrate the calculation of the performance or rate of returns that it published, circulated, and distributed, as required by Section 204 of the Advisers Act and Rule 204-2(a)(16) thereunder.

Respondent

6. **Ameriprise Financial Services, Inc.** (SEC File No. 801-28543) is an investment adviser and broker-dealer dually-registered with the Commission since December 1986 and November 1971, respectively, and is headquartered in Minneapolis, Minnesota. Among other things, Ameriprise provides advice to separately managed accounts that employ a variety of investment strategies. Ameriprise had regulatory assets under management of approximately \$198 billion as reported in its Form ADV, dated August 31, 2017.²

Other Relevant Entities

7. **Ameriprise Financial, Inc.** is the holding company of Ameriprise and is headquartered in Minneapolis, Minnesota. The common stock of Ameriprise Financial, Inc. is registered pursuant to Section 12(b) of the Exchange Act and is listed for trading on the New York Stock Exchange using the ticker AMP.

8. **F-Squared Investments, Inc.** (SEC File No. 801-69937) was an investment adviser that was registered with the Commission from March 2009 until January 2016, and was headquartered in Wellesley, Massachusetts. In October 2008, F-Squared launched its first AlphaSector index. F-Squared sub-licensed its approximately 75 AlphaSector indexes to unaffiliated third parties who managed assets pursuant to these indexes. On December 22, 2014, the Commission instituted a settled fraud action against F-Squared in which F-Squared admitted, among other things, to making the materially false claims that (a) the signals that formed the basis of the AlphaSector index returns had been used to manage client assets from April 2001 to September 2008; and (b) the signals resulted in a track record that significantly outperformed the S&P 500 Index from April 2001 to September 2008. *See In the Matter of F-Squared Investments, Inc.*, Admin. Proceeding No. 3-16325 (Dec. 22, 2014).

Facts

Ameriprise's Due Diligence Is Unable to Verify F-Squared's Performance Claims

9. In early 2010, F-Squared introduced Ameriprise to its AlphaSector strategies as a possible product to be offered by Ameriprise to its clients. F-Squared marketed the AlphaSector strategies to Ameriprise as ETF sector rotation strategies that were based on an algorithm that yields a "signal" indicating whether to buy or sell nine industry ETFs.³ If the algorithm

² Regulatory assets under management include the securities portfolios for which Ameriprise provides continuous and regular supervisory or management services.

³ F-Squared created several AlphaSector strategies and sub-licensed approximately 75 AlphaSector indexes. The AlphaSector indexes that are the subject of this matter, including the AlphaSector Rotation Index and the

produced buy signals for three or fewer sector ETFs, the relevant AlphaSector strategy provided for some or all of the assets to be invested in cash equivalents. Following the introduction, Ameriprise began considering whether it would enter into a model manager agreement with F-Squared whereby Ameriprise would establish two investment products on its Active Opportunity ETF Portfolios platform that followed the F-Squared strategies.

10. F-Squared described the AlphaSector strategies falsely to Ameriprise by, among other things, representing that: (a) the AlphaSector Rotation strategy had been used to manage client assets from April 2001 to September 2008, often calling it a “live” track record; and (b) the track record had significantly outperformed the S&P 500 Index from April 2001 to September 2008. In reality, no assets tracked the AlphaSector Rotation strategy until 2008 and the back-tested track record was substantially overstated.

11. Ameriprise knew or should have known that it did not have a reasonable basis to believe that F-Squared’s advertising claims for the AlphaSector strategies were accurate. During its review, the Ameriprise group primarily responsible for conducting due diligence on F-Squared and the AlphaSector strategies was aware that F-Squared represented the performance of the AlphaSector strategies as “not backtested,” but disagreed with that characterization, in part because the historical performance could not be verified. They also had outstanding questions about F-Squared’s transparency, including its refusal to provide composite performance for its historical track record as well as its refusal to reveal the name of the firm responsible for the algorithm or for the AlphaSector performance history that pre-dated F-Squared’s founding in 2006. Despite knowing the performance could not be verified and the unanswered questions in the due diligence process, Ameriprise took no additional steps to verify the accuracy of F-Squared’s performance claims for the April 2001 through September 2008 period. Ameriprise ultimately decided to add the AlphaSector strategies to its platform, in part, because Ameriprise was looking to add a downside protection strategy to its platform and the AlphaSector investment process seemed novel, interesting, and different. Ameriprise entered into a model manager agreement with F-Squared on August 30, 2010 and began investing client assets in the AlphaSector strategies.

AlphaSector Allocator Index, were based, in whole or in part, on investments in U.S. Equity ETFs. As with all indexes, the performance of the AlphaSector Rotation and AlphaSector Allocator indexes are inherently hypothetical in the sense that the index does not purport to reflect the performance of any particular client or account. However, the AlphaSector Rotation Index and AlphaSector Allocator Index were advertised as being based on a strategy that had been in place since 2001 and therefore the performance of these indexes was advertised as “not backtested” when in fact the performance *was* back-tested.

Ameriprise's Advertisements Contained Misstatements

12. Ameriprise incorporated portions of F-Squared's advertisements into its own advertisements – including claims concerning the live nature of the track record and the significant outperformance claim – and disseminated them to its clients and prospective clients, without having a reasonable basis to conclude that F-Squared's exceptional performance claims were true. For example, from December 2010 through September 2013, Ameriprise disseminated AlphaSector advertisements for its own separately managed account strategies that included the historical performance of the AlphaSector Rotation Index to demonstrate the performance of the AlphaSector strategies for the period April 2001 to September 2008 without disclosing that the index was hypothetical and back-tested. Instead, these advertisements incorporated F-Squared's own disclosure language verbatim, which described the historical performance of AlphaSector as "not backtested." Although Ameriprise disagreed with F-Squared's characterization of AlphaSector's performance for April 2001 to September 2008 as "not back tested" and it reviewed generally the content of these advertisements, the review did not identify the disclosure that inaccurately described the historical performance as "not backtested." As a result, Ameriprise repeated claims that the performance was "not backtested" in its marketing of the AlphaSector strategies. As described above, Ameriprise's AlphaSector advertisements also substantially overstated the performance of the back-tested track record of the AlphaSector Rotation Index during this period based on the false information provided by F-Squared. In certain advertisements and based on F-Squared marketing materials, Ameriprise further inaccurately represented that actual investor portfolios reduced exposures to equity sectors and increased cash between April 1, 2001 and September 30, 2008, a period during which no investor money was invested in the AlphaSector strategies. In advising clients to invest in the AlphaSector strategies based, in part, on their historical performance, Ameriprise never disclosed its disagreement with F-Squared's view that the AlphaSector Rotation Index was "not back tested."

Ameriprise Provided Its Sales Force With Inaccurate Information

13. Based on F-Squared's claims, Ameriprise also provided its financial advisors—the primary interface between Ameriprise and its clients when soliciting investment in the AlphaSector strategies—with inaccurate information. In addition to disseminating materials to the Ameriprise financial advisors that indicated that the AlphaSector strategies were not back-tested, Ameriprise represented inaccurately to Ameriprise financial advisors that the AlphaSector Rotation strategy was able to double investor money since 2001 and stressed the "proven results" of AlphaSector strategies, which they claimed substantially outperformed the market during 2002 and 2008.

Ameriprise Failed to Correct Misstatements After F-Squared Removes Performance

14. In October 2013, F-Squared instructed Ameriprise to remove references in its advertising materials to specific performance information of F-Squared for the periods prior to September 2008. Ameriprise knew that F-Squared's changes to the historical performance resulted from an examination of F-Squared by the staff of the Commission. In light of this information, Ameriprise knew or should have known that no AlphaSector performance information for periods prior to October 2008 should have been included in its advertisements. While Ameriprise did make efforts to remove the inaccurate information provided by F-Squared from its marketing materials, Ameriprise continued to distribute advertisements that described inaccurately the AlphaSector strategies as "stress-tested across the past two bear markets and a bull market."

Ameriprise Failed to Adopt and Implement Adequate Policies and Procedures

15. Ameriprise was required to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules. As an adviser that often relied on third-party portfolio strategist performance information and marketing materials, both in retaining portfolio strategists and in marketing a portfolio strategist to its own clients or prospective clients, Ameriprise should have adopted and implemented policies and procedures reasonably designed to assess the accuracy of such materials. However, Ameriprise had inadequate written policies and procedures for evaluating and monitoring the accuracy of advertisements or performance information where the information came from third-party sources, such as F-Squared, and was then directly or indirectly published, circulated, or distributed by Ameriprise to other persons. Ameriprise also failed to adopt adequate written policies and procedures regarding the retention of books and records necessary to support the basis for performance information in advertisements. As a result, Ameriprise failed to adopt and implement reasonably designed written policies and procedures regarding marketing materials that contained information from third-party sources.

Ameriprise Failed to Maintain Adequate Books and Records

16. Ameriprise was required to make and keep true, accurate and current records or documents necessary to form the basis for or demonstrate the calculation of the performance or rate of returns that it published, circulated, or distributed to ten or more persons. In marketing its own advisory services, Ameriprise published, circulated, and distributed the 2001-2008 historical performance of the AlphaSector strategy in client presentations and marketing materials, and other communications to numerous clients, investors, and potential investors. However, Ameriprise never made or kept records or documents sufficient to form the basis for or demonstrate the calculation of the historical performance or rate of return of F-Squared's AlphaSector strategies.

Violations

17. As a result of the conduct described above, Respondent willfully⁴ violated Section 206(2) of the Advisers Act, which prohibits any investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. A violation of Section 206(2) may rest on a finding of simple negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.*

18. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder, which makes it a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of Section 206(4) of the Advisers Act to, among other things, directly or indirectly publish, circulate or distribute an advertisement which contains any untrue statement of material fact, or which is otherwise false or misleading. A violation of Section 206(4) and the rules thereunder does not require scienter. *Steadman*, 967 F.2d at 647.

19. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder by failing to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.

20. As a result of the conduct described above, Respondent willfully violated Section 204(a) of the Advisers Act and Rule 204-2(a)(16) thereunder. Section 204(a) of the Advisers Act requires investment advisers to make and keep certain records as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Rule 204-2 under the Advisers Act requires investment advisers registered or required to be registered to make and keep true, accurate and current various books and records relating to their investment advisory business, including all accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser publishes, circulates, or distributes, directly or indirectly, to ten or more persons.

Retention of a Compliance Consultant

21. In determining to accept Respondent's Offer, the Commission considered Ameriprise's voluntary retention of a compliance consultant in February 2017. Ameriprise retained a compliance consultant to, among other things, conduct a comprehensive review of Ameriprise's written compliance policies and procedures: (i) with respect to separately managed

⁴ 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)).

accounts, the publication, circulation, communication, or distribution of third-party marketing materials or materials that include third-party-produced performance information, and (ii) with respect to the initial and continuing due diligence into and retention of portfolio strategists, policies and procedures related to assessing portfolio strategist performance claims.

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) the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Ameriprise shall cease and desist from committing or causing any violations and any future violations of Sections 204(a), 206(2), and 206(4) of the Advisers Act and Rules 204-2(a)(16), 206(4)-1(a)(5), and 206(4)-7 thereunder.

B. Ameriprise is censured.

C. Ameriprise shall, within 10 days of the entry of this Order, pay disgorgement of \$6.3 million (\$6,300,000), prejudgment interest of \$700,000, and a civil penalty in the amount of \$1.75 million (\$1,750,000) 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 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 identifying Ameriprise as the 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 Corey A. Schuster, Assistant

Director, Asset Management Unit, Securities and Exchange Commission, 100 F Street N.E.,
Washington, DC 20549-5012.

D. 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, Respondent 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 Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent 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 Respondent 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