

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 85249 / March 5, 2019

INVESTMENT ADVISERS ACT OF 1940
Release No. 5119 / March 5, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19020

In the Matter of

BB&T Securities, LLC,
as successor-in-interest to Valley
Forge Asset Management, LLC

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 (the “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 (the “Exchange Act”) and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (the “Advisers Act”) against BB&T Securities, LLC (“BB&T Securities” 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, 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 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 (the “Order”), as set forth below.

III.

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

SUMMARY

1. These proceedings arise out of misleading statements and inadequate disclosures by Valley Forge Asset Management, LLC ("Valley Forge"), a formerly dually registered investment adviser and broker-dealer, and the predecessor in interest to Sterling Advisors, a division of BB&T Securities, relating to directed brokerage arrangements offered to Valley Forge's investment advisory clients.

2. From at least 2013 to 2016 (the "Relevant Period"), Valley Forge made misleading statements in its Forms ADV Part 2A and investment advisory contracts with clients regarding the services and prices offered by its in-house broker that led numerous clients to choose Valley Forge for brokerage services over other significantly less expensive options. Valley Forge benefitted financially from these advisory clients selecting its in-house broker and failed to disclose adequately the extent of its conflict of interest in its Forms ADV Part 2A or otherwise. In 2015, BB&T Corporation ("BB&T Corp.") acquired Valley Forge's parent entity, and BB&T Securities subsequently reduced the prices of the in-house brokerage services offered to advisory clients and amended the disclosures relating to its options for directing brokerage.

3. During the Relevant Period, advisory clients paid Valley Forge more than \$4.7 million in excess compensation.

4. As a result of this conduct, BB&T Securities, as successor-in-interest to Valley Forge, willfully violated Sections 206(2) and 207 of the Advisers Act.

RESPONDENT

5. **BB&T Securities**, a Delaware limited liability company and wholly owned subsidiary of BB&T Corp., is a dually registered broker-dealer and investment adviser with its principal place of business in Richmond, Virginia. BB&T Securities has been registered with the Commission since June 2007 as a broker-dealer and September 2012 as an investment adviser. On its Form ADV dated October 2017, BB&T Securities reported that it had approximately \$19.1 billion in regulatory assets under management and provides investment advisory services to over 44,600 client accounts.

OTHER RELEVANT ENTITY

6. **Valley Forge**, formerly a Pennsylvania limited liability company, was a dually registered broker-dealer and investment adviser with its principal place of business in King of Prussia, Pennsylvania. Valley Forge was registered with the Commission as a broker-dealer from 1977 to June 1, 2016 and as an investment adviser until May 20, 2016. On its Form ADV dated August 2015, Valley Forge reported that it had approximately \$2.392 billion in regulatory

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.

assets under management and provided investment advisory services to more than 2,000 client accounts. On August 1, 2015, Valley Forge's former corporate parent merged with and into BB&T Corp. As a result of the acquisition, Valley Forge became a wholly owned subsidiary of BB&T Corp. On March 1, 2016, Valley Forge merged with an affiliate into BB&T Securities and is now operating as Sterling Advisors, a division of BB&T Securities.

FACTS

Background

7. During the Relevant Period, Valley Forge provided investment management services to individuals, foundations, endowments, public funds, retirement funds, corporations, banks, and trusts. Valley Forge had few brokerage-only customers, and it seamlessly operated its advisory and brokerage businesses in the same office space, with many employees having dual roles.

8. For the vast majority of its advisory accounts, Valley Forge provided advisory services on a discretionary basis to separately managed retail and institutional accounts focusing its investments on large capitalization stocks and fixed income securities.

9. Clients signed an Investment Advisory Contract with Valley Forge that set forth the parameters of their relationship with Valley Forge.

Directed Brokerage

10. Valley Forge offered its advisory clients three choices for brokerage services. These options were set forth in Valley Forge's Form ADV Part 2, as well as in Exhibit 1 to the Investment Advisory Contract.

11. In the first option, a client could direct his or her brokerage to Valley Forge's own "full service brokerage" and the client would have the ability to negotiate his or her commission rates. This option was referred to by Valley Forge as "Affiliated Brokerage."

12. With regard to the Affiliated Brokerage option, Valley Forge's Form ADV Part 2 stated that:

If you choose this option, we will benefit monetarily. Providing multiple services may be viewed as creating a potential conflict of interest. Similar services may be offered at higher or lower prices elsewhere. Under this option, we provide a negotiated commission rate – our full commission rate is available upon request. We ask that you carefully consider the services offered relative to the brokerage commission being paid based on your individual needs.

13. With regard to the Affiliated Brokerage option, Valley Forge's Exhibit 1 to the Investment Advisory Contract stated that:

Client acknowledges that by choosing this option, Advisor will benefit monetarily. The use of Advisor as the broker may be viewed as a potential conflict of interest. Similar services by other brokers may be offered at higher or lower prices elsewhere. Client acknowledges that it is receiving a negotiated commission rate and that they have the right to negotiate commissions with Advisor. This is discounted from Advisor's retail schedule. Client acknowledges that it may review Advisor's full commission schedule in Advisor's office upon request. ...

14. Valley Forge also generally told clients interested in the Affiliated Brokerage option that they were willing to provide a discount of at least 70% off of Valley Forge's "full commission rate," and reflected the discount on Exhibit 1 to the Investment Advisory Contract.

15. Under this Affiliated Brokerage relationship, Valley Forge served as the introducing broker. Valley Forge had a clearing agreement with Broker A for those clients that chose the Affiliated Brokerage option. Broker A was not associated with Valley Forge or its parent or affiliates.

16. During the Relevant Period, more than 1,200 of the approximately 2,000 Valley Forge advisory clients (approximately 59%) selected the Affiliated Brokerage option.

17. Option two, referred to by Valley Forge as "Directed Brokerage," allowed the client to designate a third-party broker-dealer to handle all aspects of the brokerage relationship. Under this option, the client would negotiate the fees and/or commissions directly with the third-party broker-dealer.

18. During the Relevant Period, nearly 840 clients (approximately 40%) chose the Directed Brokerage option. Of the nearly 840 accounts, approximately 690 used Broker B. Valley Forge partnered with Broker B on a referral program whereby Broker B referred its brokerage customers to Valley Forge for investment advisory services. Under the program, Valley Forge's advisory clients who chose Broker B for custody and brokerage services received a number of additional benefits without cost or at a discount, such as duplicate statements to Valley Forge, access to certain mutual funds with no transaction fees, and discounts on other products and services offered by third parties.

19. In option three, referred to by Valley Forge as "Discretionary Brokerage," the client would choose where its assets would be custodied and designate a "preferred broker," but Valley Forge had discretion to select the broker-dealer for each trade on a "best price and execution basis." Only about 24 of Valley Forge's clients selected this Discretionary Brokerage option during the Relevant Period.

20. When a client chooses the broker-dealer to be used for their trades, as envisioned within the Affiliated Brokerage or Directed Brokerage options offered by Valley Forge, the adviser must comply with certain rules, including the instructions for Form ADV Part 2A, which state that "If you and the broker-dealer are affiliates or have another economic relationship that creates a material conflict of interest, describe the relationship and discuss the conflicts of interest it presents."

Misleading Disclosures to Clients

21. Valley Forge's statements regarding the Affiliated Brokerage option, including statements about its "full service" brokerage and discounts from its retail rates, gave the misleading impression that clients would receive a high level of service at a low cost.

22. In this context, Valley Forge misled clients by stating that the Affiliated Brokerage option provided "full service brokerage services." The firm did not provide any services to Affiliated Brokerage clients that were not also provided to clients that chose the other brokerage options, which had significantly lower costs. Moreover, because Valley Forge did not disclose what services it was providing to its Affiliated Brokerage clients, clients could not effectively "carefully consider the services offered relative to the brokerage commission being paid" as Valley Forge cautioned in its Form ADV Part 2 and Exhibit 1 of the Investment Advisory Contract.

23. In addition, Valley Forge made misleading statements regarding the costs associated with its Affiliated Brokerage option. While Valley Forge told clients that, "Similar services by other brokers may be offered at higher or lower prices elsewhere," its rates were significantly higher than those clients would have paid under the other brokerage options offered by Valley Forge.

24. Indeed, the average commission rate paid by clients selecting the Affiliated Brokerage option was \$.18/share, while the average commission paid by clients selecting the Directed Brokerage option (mainly to Broker B) was \$.04/share, and those choosing the Discretionary Brokerage, who tended to be large institutional clients, paid even less. Because of its partnership with Broker B, Valley Forge was aware that the Directed Brokerage option could result in clients paying roughly 4.5 times less than they would pay under the Affiliated Brokerage option. Moreover, nearly every trade was more expensive with the Affiliated Brokerage option, because the minimum commission per trade was more than double the maximum commission charged for each trade by Broker B.

25. Valley Forge also misled clients regarding the benefits of the Affiliated Brokerage option by stating that Affiliated Brokerage clients could negotiate a discounted rate with Valley Forge. In reality, nearly 92% of Valley Forge's Affiliated Brokerage clients received a "discount" from the "full commission" retail rate, with the vast majority receiving a price 70% lower than the supposed retail rate. Of course, as noted above, this discounted price was still significantly higher than other available options, rendering inaccurate Valley Forge's suggestion that the pricing of the Affiliated Brokerage option worked to clients' benefit.

26. Section 206 of the Advisers Act imposes on investment advisers a fiduciary duty to act for the benefit of their clients. An adviser's fiduciary duty is implicated when the adviser explains and recommends brokerage arrangements to a client. That duty includes, among other things, an obligation to not mislead clients regarding the services provided and their costs. Furthermore, Section 207 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 to omit to state in any such application or report any material fact which is required to be stated therein."

27. As an investment adviser, Valley Forge had an obligation to disclose fully all material facts to its advisory clients, including any conflicts of interest between itself and its advisory clients that could affect the advisory relationship. To meet this disclosure obligation, Valley Forge was required to provide its advisory clients with sufficient information so that they could understand Valley Forge's conflicts of interest, enabling clients to give informed consent to the conflicts or reject them.

28. During the Relevant Period, Valley Forge made disclosures in its Forms ADV Part 2A, filed with the Commission, regarding the various brokerage options it offered to clients.

29. Valley Forge made misleading statements in its Forms ADV Part 2A and the Investment Advisory Contract regarding its Affiliated Brokerage program, and failed to inform fully its clients regarding their brokerage choices. Valley Forge charged its Affiliated Brokerage clients higher commissions compared to those paid by clients who used the other directed brokerage options, while providing the same services to both sets of clients. Because the excess fees inured largely to the benefit of Valley Forge, the firm had a conflict of interest concerning its Affiliated Brokerage program that was not disclosed adequately.

Harm to Clients and Valley Forge's Excess Compensation

30. Because of Valley Forge's misleading statements, Valley Forge's clients lacked the information they needed to evaluate these conflicts of interest and to make an informed decision regarding their brokerage options. As a result, clients paid, and Valley Forge obtained, approximately \$4.7 million in excess compensation, which constitute ill-gotten gains.

VIOLATIONS

31. As a result of the conduct described above, Valley Forge willfully² violated Section 206(2) of the Advisers Act, which prohibits an investment adviser, directly or indirectly, 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, proof of scienter is not required. *SEC v. Steadman*, 967 F.2d 636, 643n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)).

32. As a result of the conduct described above, Valley Forge 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 to omit to state in any such application or report any material fact which is required to be stated therein." Form ADV Part 2A requires investment advisers to disclose all material conflicts of interest. A person violates Section 207 by filing a false or materially misleading Form ADV Part 2A, including any amended Forms ADV. *See* Rule 204-1(d).

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)).

REMEDIAL EFFORTS

33. In determining to accept the Offer, the Commission considered remedial acts taken by Respondent, in particular, the fact that it acted to end the Affiliated Brokerage program, amended the cost structure of the in-house brokerage services offered to advisory clients, and amended its disclosures, as well as the cooperation afforded by it to 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 Respondent's Offer.

Accordingly, pursuant to Section 15(b) 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 206(2) and 207 of the Advisers Act.
- B. Respondent is censured.
- C. Respondent shall pay disgorgement, prejudgment interest, and a civil money penalty totaling \$5,709,753, as follows:
 - (i) Respondent shall pay disgorgement of \$4,712,366 and prejudgment interest of \$497,387, consistent with the provisions of this Subsection C.
 - (ii) Respondent shall pay a civil money penalty in the amount of \$500,000;
 - (iii) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund for distribution to the affected past and present advisory clients who used Valley Forge's Affiliated Brokerage service during the Relevant Period (each, an "Affected Investor") is created for the \$5,709,753 in disgorgement, prejudgment interest, and penalty paid by Respondents as described above.
 - (iv) Within ten (10) days of the entry of this Order, Respondent shall deposit \$5,709,753 (the "Distribution Fund") into an escrow account at a financial institution not unacceptable to the Commission staff and Respondent shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. §3717.
 - (v) Respondent shall be responsible for administering the Distribution Fund and may hire a professional acceptable to the Commission, at its own cost, to assist it in the administration of the distribution. The costs and expenses of administering the Distribution Fund, including any such

professional services, shall be borne by Respondent and shall not be paid out of the Distribution Fund.

- (vi) Respondent shall distribute from the Distribution Fund to each Affected Investor an amount representing the excess compensation Respondent received from the Affected Investor in connection with the Affiliated Brokerage program during the Relevant Period plus the reasonable interest thereon, pursuant to a disbursement calculation (the “Calculation”) and payment file (the “Payment File”) that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. No portion of the Distribution Fund shall be paid to Respondent or its past or present officers or directors.
- (vii) Respondent shall, within ninety (90) days of the entry of this Order, submit a proposed Calculation to the staff for its review and approval. Respondent shall also provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondent’s proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that Respondent is notified of the objection, which revised Calculation shall be subject to all of the provisions of this Subsection C.
- (viii) Respondent shall, within thirty (30) days of the written approval of the Calculation by the Commission staff, submit a Payment File for review and acceptance by the Commission staff demonstrating the application of the methodology to each Affected Investor. The Payment File should identify, at a minimum: (1) the name and address of each payee, (2) the manner in which payment will be made (e.g. check, credit to an account, wire transfer), and (3) the exact amount of the payment to be made to each payee.
- (ix) Respondent shall disburse all amounts payable to Affected Investors within ninety (90) days of the date the Commission staff accepts the Payment File, unless such time period is extended as provided in Paragraph (xiii) of this Subsection C.
- (x) If Respondent is unable to distribute or return any portion of the Distribution Fund for good cause, including factors beyond Respondent’s control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934 when the distribution of funds is complete and before the final accounting provided

for in Paragraph (xii) of this Subsection C. Any such payment shall be made in accordance with Paragraph IV.D below.

- (xi) The Distribution Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code (“IRC”), 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondent shall be responsible for any and all tax compliance responsibilities associated with distribution of the Distribution Fund, including but not limited to tax obligations resulting from the Distribution Fund’s status as a QSF and the Foreign Account Tax Compliance Act (“FATCA”), and may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by Respondent and shall not be paid out of the Distribution Fund.
- (xii) Within one hundred fifty (150) days after Respondent completes the distribution of all amounts payable to Affected Investors, Respondent shall submit to the Commission staff a final accounting and certification of the disposition for Commission approval. The final accounting and certification shall be in a format to be provided by the Commission staff. The final accounting and certification shall include, but not be limited to, by payee: (i) the amount paid to each Affected Investor; (ii) the date of each payment; (iii) the check number or other identifier of money transferred or credited to the person or entity; (iv) the amount of any returned payment and the date received; (v) a description of any effort to locate a prospective payee whose payment was returned, or to whom payment was not made for any reason; (vi) the total amount, if any, forwarded to the Commission for transfer to the United States Treasury; and (vii) an affirmation that Respondent has made payments to Affected Investors in accordance with the Payment File approved by the Commission staff. Respondent shall submit the final accounting and certification, together with proof and supporting documentation in a form acceptable to Commission staff, under a cover letter that identifies BB&T Securities as the Respondent in these proceedings and the file number of these proceedings to Scott A. Thompson, Assistant Regional Director, Philadelphia Regional Office, Securities and Exchange Commission, 1617 JFK Blvd., Suite 520, Philadelphia, PA, 19103, or such other address the Commission staff may provide. Any and all supporting documentation for the accounting and certification shall be provided to the Commission staff upon request, and Respondent shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.
- (xiii) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the distribution of the Distribution Fund shall be counted in calendar days,

except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

- D. Respondent's transfer of any undistributed funds to the Commission for transmittal to the United States Treasury ordered pursuant to Subsection C must be made in one of the following ways:
- (i) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
 - (ii) 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
 - (iii) 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 BB&T Securities 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 Scott A. Thompson, Assistant Regional Director, Philadelphia Regional Office, Securities and Exchange Commission, 1617 JFK Blvd., Suite 520, Philadelphia, PA, 19103.

- 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, 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