

**UNITED STATES OF AMERICA**  
before the  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 89405 / July 28, 2020**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5550 / July 28, 2020**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19894**

**In the Matter of**

**VALIC Financial  
Advisors, Inc.,**

**Respondent.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS, PURSUANT TO  
SECTIONS 15(b) OF THE SECURITIES  
EXCHANGE ACT OF 1934 AND 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 VALIC Financial Advisors, Inc. (“VFA” 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 Exchange Act 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<sup>1</sup> that

#### Summary

1. From October 2006 to late 2019, VFA failed to disclose to certain Florida teachers who were potential and actual clients that VFA's parent, The Variable Annuity Life Insurance Company, doing business under the AIG Retirement Services, Inc. brand ("VALIC"), was providing cash and other financial benefits to a for-profit company owned by Florida K-12 teachers' unions. That company (the "Teachers Union Entity") received cash and other financial benefits in exchange for referring teachers to VALIC's and VFA's products and services. Specifically, VFA received the following benefits from this financial arrangement: (1) the Teachers Union Entity made VFA its preferred financial services partner for members, who were all Florida public school K-12 teachers and other public education employees ("K-12 teachers"), (2) VFA was given increased opportunities to sell its investment products and services to K-12 teachers not afforded other advisers, and (3) three full-time VALIC employees, called Member Benefit Coordinators ("MBCs"), were deceptively identified as the Teachers Union Entity's employees, instead of as VALIC employees, at various retirement planning seminars and benefit events attended by K-12 teachers and referred K-12 teachers to VFA for investment advisory services. VFA's conduct constituted a course of business which operated as a fraud or deceit upon clients and prospective clients, and as a result, VFA violated Sections 206(2) and Section 206(4) of the Investment Advisers Act of 1940, and Rules 206(4)-3 and 206(4)-7 thereunder.

2. During the time period the Teachers Union Entity and the MBCs referred K-12 teachers to VFA, VFA earned millions of dollars in fees from the investment products it sold to K-12 teachers. At no time during the relationship between the Teachers Union Entity and VALIC, were the K-12 teachers told that VALIC was making payments to the Teachers Union Entity so that VFA had the opportunity to sell financial products and services to the K-12 teachers that the Teachers Union Entity had access to. VFA also never disclosed to its K-12 advisory clients that the MBCs who referred them to VFA were VALIC employees. The K-12 teachers therefore did not know that the Teachers Union Entity or the MBCs had an incentive to refer them to VFA. VFA also failed to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

#### Respondent

3. **VALIC Financial Advisors, Inc. ("VFA")** is a dually registered investment adviser and broker-dealer incorporated in Texas in 1996 and headquartered in Houston, Texas (CRD#42803). VFA is a wholly-owned subsidiary of VALIC. All VFA investment adviser representatives ("IARs") are employees of VALIC and the majority are registered representatives with VFA. As of March 30, 2020, VFA managed approximately \$21.1B on a discretionary basis.

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<sup>1</sup> 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.

## **Other Relevant Entity**

4. **The Variable Annuity Life Insurance Company (“VALIC”)**, is a registered investment adviser incorporated and headquartered in Texas (CRD#104561). VALIC is primarily engaged in the offering and issuance of fixed and variable annuity contracts and is licensed to issue annuities in 50 states and the District of Columbia. VALIC is an indirect wholly-owned subsidiary of AIG Life Holdings, Inc. and a wholly-owned subsidiary of American International Group, Inc. In 2019, VALIC and its affiliates in the Group Retirement business rebranded as AIG Retirement Services.

## **Background**

### **Florida K-12 Defined-Contribution Retirement Plans**

5. The State of Florida has 67 K-12 school districts (one for each Florida county) and approximately 180,000 K-12 public school teachers. Each Florida school district provides its K-12 teachers with defined contribution tax-deferred retirement plans under Sections 403(b) and/or 457(b) of the Internal Revenue Code. Each school district selects financial services vendors to provide annuities and/or mutual funds to that district’s K-12 teachers through that district’s plan. VFA is a financial services vendor in all but two school districts in Florida.

### **VFA Failed to Disclose to K-12 Teachers that VALIC Paid the Teachers Union Entity for Client Referrals and the MBCs were VALIC Employees**

6. The Teachers Union Entity was founded in 1996 by the Florida Education Association, a compilation of Florida K-12 local teacher unions and its motto is “created for teachers - by teachers.” Its publicly stated purpose was to make a difference in the financial lives of K-12 teachers by helping them protect their families and financial futures through providing insurance and financial products and services at competitive rates. Because of this publicly stated commitment, the Teachers Union Entity garnered trust from teacher unions and enhanced access to K-12 teachers.

7. In October 2006, VALIC and the Teachers Union Entity entered into a five-year Letter of Understanding (the “Agreement”). Under the Agreement, VALIC paid the Teachers Union Entity \$10,000 monthly for its exclusive endorsement of VFA as its preferred financial services partner. In exchange for this payment, the Teachers Union Entity actively promoted VFA’s financial planning services to K-12 teachers and agreed not to promote or endorse any competitors to VALIC nor engage in any activity that would conflict with the performance of VALIC.

8. In conjunction with the Agreement, VALIC also agreed to provide the Teachers Union Entity with three Member Benefit Coordinators, (“MBCs”) each of whom was a full-time VALIC employee. The MBCs were to work on behalf of and support the Teachers Union Entity and at the same time refer K-12 teachers to VFA, as well as the Teachers Union Entity’s other business partners. VALIC paid the full salaries and related expenses of each MBC for a total of approximately \$60,000-\$70,000 annually per MBC, or a total of approximately \$180,000-\$210,000 annually.

9. VALIC entered into these financial arrangements with the Teachers Union Entity to expand VFA's access to K-12 teachers thereby obtaining new VFA clients and increasing VFA's sales of proprietary financial and advisory products. The Agreement and MBCs were valuable to VFA's K-12 teachers' business in Florida. Thus, VALIC renewed the Agreement every three years, for a total of thirteen years, until VALIC terminated the Agreement in October 2019, following an internal investigation triggered by press inquiries about the relationship with the Teacher's Union Entity and being contacted by the Commission regarding VALIC's economic affiliations in the K-12 market. The Agreement never required VALIC, VFA or the Teachers Union Entity to disclose to K-12 teachers VALIC's payments to the Teachers Union Entity or that the MBCs were VALIC employees whose salaries were paid by VALIC.

10. The three VALIC MBCs increased VFA's access to K-12 teachers. Each MBC was assigned by VALIC to be a full-time Teachers Union Entity representative promoting VFA as well as the Teachers Union Entity's other non-financial services business partners. The MBCs reported to the Teachers Union Entity management for daily tasks. The MBCs had their own Teachers Union Entity business cards and email addresses and held themselves out as Teachers Union Entity employees. Each MBC was assigned to engage with K-12 teachers and their unions in one of three Florida geographic regions: north, south and central. The MBCs met with the local union leadership in their region and created action plans to market VFA to K-12 teachers. The MBCs scheduled VFA financial seminars for K-12 teachers, arranged for VFA and the Teachers Union Entity to attend K-12 teacher benefit fairs also attended by other financial providers and businesses, and participated at other events where K-12 teachers would be present. Typically, at these events, the Teachers Union Entity had a promotional table and VFA had a separate promotional table. This separation signaled to K-12 teachers in attendance that the Teachers Union Entity and the MBCs were independent from VFA. The MBCs did not disclose to attendees that they were VALIC employees.

11. Additionally, the MBCs handed out Teachers Union Entity brochures to K-12 teachers, approved by VFA management that advertised each of the Teachers Union Entity's business partners, including VFA, and provided contacts for each. The brochures listed the MBCs as the Teachers Union Entity contacts. Nowhere did the brochure disclose that the MBCs were VALIC employees or that VALIC paid the Teachers Union Entity to promote VFA.

12. In an effort to solicit new clients for VFA, the Teachers Union Entity and the MBCs promoted VFA's complimentary comprehensive financial planning program, Members Advantage Program ("MAP"), to K-12 teachers. After being referred by the Teachers Union Entity, a VFA representative often would meet with the K-12 teacher, obtain the individual's personal financial information, upload it to the MAP planning program and, based on the results, the VFA representative would recommend financial strategies to that individual. A primary goal of VFA in providing the complimentary MAP was to sell to K-12 teachers VFA's proprietary Portfolio Director fixed and variable annuity product ("PD"), and its add-on fee-based advisory product, Guided Portfolio Solutions Portfolio Manager Program ("GPS"). Individuals in PD pay annuity and management fees to VALIC and individuals in GPS pay an advisory fee to VFA based on the account value at each calendar quarter-end (a range of 0.45% - 0.60% annually of assets under management, with 0.58% being the average rate paid by K-12 teachers). VFA did not disclose to the K-12 teachers who received the MAP or purchased GPS that VALIC was paying the Teachers Union Entity and the MBCs to promote VFA and/or its financial planning

services and products and refer potential clients to VFA.

13. At the seminars, fairs, and events described above, when K-12 teachers approached the Teachers Union Entity's table staffed by the MBCs and asked for financial planning or inquired about retirement investing, the MBCs referred the K-12 teachers to VFA either by introducing them personally to the VFA representative attending the event, providing the K-12 teacher with the VFA representative's contact information, or taking the K-12 teacher's contact information and providing it later to a VFA representative to contact the teacher. As stated above, at no time during these referrals did VALIC, VFA, the Teachers Union Entity, or the MBCs disclose to K-12 teachers that the MBCs were VALIC employees, or that VALIC was paying the Teachers Union Entity a monthly fee. In addition, VFA did not train or instruct the MBCs, or the Teachers Union Entity, to disclose to K-12 teachers that the MBCs were VALIC employees.

14. From January 1, 2014 through December 31, 2019, VFA earned approximately \$4 million in fees from the sale of its GPS product, and VALIC earned approximately \$29 million in fees from PD contracts sold to K-12 teachers since the inception of VALIC's relationship with the Teachers Union Entity. At no time during this period did VFA have a policy requiring VALIC, VFA, the Teachers Union Entity or the MBCs to disclose the economic relationship between VALIC and the Teachers Union Entity.

### Violations

15. As a result of the conduct described above, VFA willfully<sup>2</sup> violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client." Scienter is not required to establish a violation of Section 206(2). *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. 180,194-95 (1963)).

16. As a result of the conduct described above, VFA willfully violated Section 206(4) of the Advisers Act, which makes it "unlawful for any investment adviser . . . to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative," and Rule 206(4)-3 thereunder, which prescribes requirements a registered adviser generally must satisfy for a cash fee to be properly paid to a solicitor including, among other things, that the solicitor must provide the client with a current copy of both the adviser's and the solicitor's written disclosure documents, and that the adviser must receive from the client a signed and dated acknowledgement of receipt of these disclosure documents before or at the time of entering into any written or oral investment advisory contract with such client. A violation of Section 206(4) and the rules thereunder does not require scienter. *Steadman*, 967 F.2d at 647.

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<sup>2</sup> "Willfully," for purposes of imposing relief under Section 203(e) of the Advisers Act and 15(b) of the Exchange Act, "means no more than 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." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ed]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

17. As a result of the conduct described above, VFA willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

### **Respondent's Cooperation**

18. In determining to accept the Offer, the Commission considered cooperation afforded the Commission staff and remedial acts promptly undertaken by Respondent.

### **Undertakings**

19. Respondent undertakes to:

- a. Within 10 days of entry of this Order, VFA will cap the management fee for its Guided Portfolio Solutions ("GPS") advisory product at 45 basis points (0.45%) annually of assets under management in GPS for all K-12 403(b) and K-12 457(b) participants in Florida currently enrolled in VFA's GPS product, the most favorable terms it offers for its GPS product in Florida. Notice of the 45 basis points management fee cap will be given to K-12 403(b) and K-12 457(b) participants in Florida currently enrolled in VFA's GPS product within 30 days of the adjustment. This rate will remain in effect for the participants during the duration of the GPS product enrollment by such participants.
- b. Within 30 days of the entry of this Order, VFA will make available through notice a cap on the management fee for its GPS advisory product at 45 basis points (0.45%) annually of assets under management in GPS for all K-12 403(b) and K-12 457(b) participants in Florida who currently own VFA's Portfolio Director fixed and/or variable annuities or who purchase VFA's Portfolio Director fixed and/or variable annuities within five years from the entry of this Order, to the extent that the applicable plan sponsor has opted to enable the GPS program. This rate will remain in effect for the participants during the duration of the GPS product enrollment by such participants.
- c. Within 30 days of the entry of this Order, VFA shall notify K-12 403(b) and K-12 457(b) participants in Florida enrolled in VFA's GPS product and/or owning VFA's Portfolio Director fixed and variable annuity product, as of the date of this Order, of the settlement terms of this Order by sending a copy of this Order to each participant via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff. At Respondent's election the notice required by this subparagraph may be accomplished simultaneously with the notice required by subparagraph 19(a) or (b).
- d. Within 45 days of entry of this Order, VFA shall certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the

undertaking(s), 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 Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Jeremy Pendrey, Assistant Regional Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549.

#### 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 cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-3 and 206(4)-7 promulgated thereunder.
- B. Respondent is censured.
- C. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$20,000,000.00 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) 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

D. Payments by check or money order must be accompanied by a cover letter identifying VFA 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 Jeremy Pendrey, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94110.

E. Respondent shall comply with the undertakings enumerated in Section III, 19(c) and (d) above.

By the Commission.

Vanessa A. Countryman  
Secretary