

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 92935 / September 10, 2021

INVESTMENT ADVISERS ACT OF 1940
Release No. 5856 / September 10, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20536

In the Matter of

**MML INVESTORS
SERVICES, 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 (“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 MML Investors Services, LLC (“MMLIS” or “Respondent”).

II.

In anticipation of the institution of these proceedings, MMLIS 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, MMLIS 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 (“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 breaches of fiduciary duties by MML Investors Services, LLC ("MMLIS"), a dually registered investment adviser and broker-dealer, and MSI Financial Services, Inc. ("MSI"), a formerly registered investment adviser and broker-dealer that was integrated with MMLIS in March 2017, in connection with third-party compensation that MMLIS and MSI received based on their advisory clients' investments without fully and fairly disclosing their conflicts of interest. In particular, during certain periods since at least March 2015, MMLIS and MSI invested clients in certain share classes of mutual funds that resulted in the firms receiving revenue sharing payments pursuant to agreements with their unaffiliated clearing broker (the "Clearing Broker"). In spite of these financial arrangements, MMLIS and MSI provided no disclosure or inadequate disclosure of the conflicts of interest arising from this compensation. MMLIS and MSI also breached their duty to seek best execution by causing certain advisory clients to invest in share classes of mutual funds that paid revenue sharing when share classes of the same funds were available to the clients that presented a more favorable value for these clients under the particular circumstances in place at the time of the transactions. Furthermore, MMLIS and MSI failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its mutual fund share class selection practices and disclosure of conflicts of interest arising out of its revenue sharing practices. As a result of the conduct described above, MMLIS willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondent

2. MMLIS is a Massachusetts limited liability company headquartered in Springfield, Massachusetts. MMLIS is dually registered with the Commission as an investment adviser (since July 1993) and broker-dealer (since February 1982). In its Form ADV filed on June 2, 2021, MMLIS reported it had approximately \$49 billion in regulatory assets under management and 252,369 accounts. MMLIS is a wholly-owned subsidiary of MassMutual Holding LLC.

Other Relevant Entity

3. MSI was an investment adviser and broker-dealer registered with the Commission from prior to March 2017, when MSI was integrated with MMLIS. MSI was incorporated in

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.

Delaware and, from July 2016 to March 2017, MSI was based in Springfield, Massachusetts and was a wholly-owned subsidiary of Massachusetts Mutual Life Insurance Company.

Revenue Sharing From Certain Mutual Funds

4. Many mutual fund sponsors or other affiliates pay the Clearing Broker a recurring fee to have some or all of the share classes of funds they advise offered as part of the Clearing Broker's mutual fund programs.

5. The Clearing Broker had a no-transaction-fee mutual fund program ("NTF Program"), through which investors, including clients of MMLIS and MSI, could purchase and sell certain mutual funds without paying a transaction fee. Mutual fund share classes sold through the NTF Program generally had higher expense ratios paid by clients and a higher recurring fee paid to the Clearing Broker than share classes offered by the Clearing Broker outside the NTF Program. MSI received revenue sharing from the Clearing Broker's NTF Program from October 2015 to February 2017, and MMLIS received revenue sharing from the Clearing Broker's NTF Program from at least March 2015 to February 2017 and again beginning in October 2018.

6. The Clearing Broker also had a transaction fee mutual fund program ("TF Program") that paid revenue sharing to MMLIS and MSI on some mutual fund share classes that charged transaction fees, and, like the NTF Program, these transaction fee revenue sharing share classes generally had higher expense ratios paid by clients and a higher recurring fee paid to the Clearing Broker than share classes offered by the Clearing Broker that did not pay revenue sharing. MSI received revenue sharing from the Clearing Broker's TF Program from October 2015 to February 2017, and MMLIS began to receive revenue sharing from the TF Program in October 2018.

7. Since at least 2015, the agreements between MMLIS or MSI and the Clearing Broker provided that the Clearing Broker would share revenue with MMLIS or MSI based on customer assets invested in mutual funds in the NTF Program and TF Program, including MMLIS's and MSI's advisory client assets. MMLIS's and MSI's clients indirectly paid the NTF Program and TF Program revenue sharing because the revenue sharing was reflected in the expense ratios of the mutual funds and share classes in which they invested. The payments MMLIS and MSI received under the agreement created an incentive for MMLIS and MSI to recommend or favor mutual funds covered by the agreement over other investments, including lower-cost share classes of the same mutual fund when rendering investment advice to its clients.

8. As investment advisers, MMLIS and MSI were obligated to disclose all material facts to their advisory clients, including any conflicts of interest between the investment adviser and/or its associated persons and its clients that could affect the advisory relationship. To meet this fiduciary obligation, MMLIS and MSI were required to provide their advisory clients with full and fair disclosure that was sufficiently specific so that they could understand the conflicts of interest

concerning its investment advice and have an informed basis on which to consent to or reject the conflicts.

9. Between 2015 and March 2017, MMLIS and MSI generally disclosed in their Forms ADV Part 2A brochure (“Brochure”) or elsewhere in writing to clients that the Clearing Broker offered the NTF Program and that mutual funds that were part of the NTF Program paid a fee to the Clearing Broker and that the Clearing Broker would share a portion of these fees with MMLIS and MSI. However, MMLIS and MSI did not disclose the conflicts of interest inherent in this NTF Program arrangement, including that MMLIS and MSI had an incentive to recommend or favor certain mutual funds or share classes of mutual funds that were part of the NTF Program instead of other mutual funds or lower-cost share classes of the same mutual fund when rendering investment advice to their clients.

10. In addition, MMLIS and MSI did not disclose that they received TF Program revenue sharing from client investments in advisory accounts or otherwise put clients on notice regarding the conflicts of interest inherent in this arrangement.

11. From October 2018 to December 2019, MMLIS received approximately \$2.5 million in revenue sharing payments from the Clearing Broker based on its advisory clients’ investments in funds in both the NTF Program and the TF Program. MMLIS did not disclose in its Brochures during this period that it received NTF or TF revenue sharing from client investments in advisory accounts or otherwise put clients on notice regarding the conflicts of interest inherent in this arrangement. During the Commission staff’s investigation, MMLIS decided to credit back to its clients the approximately \$2.5 million in revenue sharing that it received from October 2018 to December 2019. MMLIS also retained an outside compliance consultant to conduct a review of its revenue sharing practices and disclosures.

12. As of January 2020, MMLIS changed its practices with respect to receipt of Clearing Broker mutual fund revenue sharing and revised its Brochures accordingly. The revised Brochures reflect that MMLIS will periodically review the universe of share classes that it offers and recommend only one share class that MMLIS believes offers the most favorable expenses. When, as a result of this periodic review, MMLIS determines that a more favorable share class is available, MMLIS will convert any holders of more expensive share classes to the more favorable share class.

Best Execution Failures

13. An investment adviser’s fiduciary duty includes, among other things, an obligation to seek best execution for client transactions.²

² See, e.g., Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 and Related Matters, Exchange Act Rel. No. 23170 (Apr. 28, 1986).

14. From March 2015 to February 2017 and from October 2018 to December 2019, by causing certain MMLIS and MSI advisory clients to invest in share classes of mutual funds in the Clearing Broker's NTF and TF Programs that resulted in revenue sharing payments from the Clearing Broker to MMLIS and MSI when share classes of the same funds were available to clients that presented a more favorable value under the particular circumstances in place at the time of the transactions, MMLIS and MSI violated their duty to seek best execution for those transactions.

Compliance Deficiencies

15. Since at least 2015, MMLIS and MSI failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with either (1) the disclosure of the receipt of mutual fund revenue sharing payments from NFS's NTF Program (for the period October 2018 to December 2019) and TF Program; (2) the disclosure of the conflicts of interest presented by its mutual fund share class selection practices, or (3) making recommendations of mutual fund share classes that are not in the best interest of its advisory clients.

Disgorgement

16. The disgorgement and prejudgment interest ordered in Section IV is consistent with equitable principles, does not exceed the net profits from the violations, and is awarded for the benefit of and will be distributed to harmed investors to the extent feasible. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

Violations

17. As a result of the conduct described above, Respondent willfully³ 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." Scierter is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of 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, 194-95 (1963)).

³ "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 203(e) of the Advisers 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).

18. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require 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.

Undertakings

19. Respondent has undertaken to:
- a. Within 30 days of the entry of this Order, evaluate, update (if necessary), and review for the effectiveness of their implementation, Respondent's policies and procedures so that they are reasonably designed to prevent violations of the Advisers Act relating to disclosures concerning revenue sharing and mutual fund share class selection, and in connection with making recommendations of mutual fund share classes that are in the best interests of Respondent's advisory clients.
 - b. Within 30 days of the entry of this Order, Respondent shall notify affected investors (*i.e.*, those former and current clients who were financially harmed by the practices detailed above (hereinafter, "affected investors")) of the settlement terms of this Order by sending a copy of this Order to each affected investor 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.
 - c. Within 40 days of the entry of this Order, certify, in writing, 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 Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Robert Baker, Assistant Director, Asset Management Unit, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, MA, 02110 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.
 - d. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

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 Rule 206(4)-7 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall pay disgorgement, prejudgment interest, and a civil penalty, totaling \$2,109,458.29 as follows:

(i) Respondent shall pay disgorgement of \$1,150,505 and prejudgment interest of \$258,953.29 consistent with the provisions of this Subsection C.

(ii) Respondent shall pay a civil money penalty in the amount of \$700,000, consistent with the provisions of this Subsection C.

(iii) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest described above for distribution to affected investors. 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 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.

(iv) Within 10 days of the entry of this Order, Respondent shall deposit the full amount of the disgorgement, prejudgment interest, and civil penalty (the "Fair 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. The account holding the assets of the Fair Fund shall bear the name and taxpayer identification number of the Fair Fund. If timely deposit into the escrow account is

not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] and/or 31 U.S.C. § 3717.

(v) Respondent shall be responsible for administering the Fair Fund and may hire a professional to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.

(vi) Respondent shall distribute from the Fair Fund to each affected investor an amount representing: (a) the NTF Program revenue sharing that MSI received from the Clearing Broker from October 2015 to February 2017 and that MMLIS received from March 2015 to February 2017 where there was a lower-cost share class of the same fund; (b) the TF Program revenue sharing that MSI received from October 2015 to February 2017 where there was a lower-cost share class of the same fund, and (c) reasonable interest paid on the amounts in (a) and (b), pursuant to a disbursement calculation (the “Calculation”) that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. The Calculation shall be subject to a *de minimis* threshold. No portion of the Fair Fund shall be paid to any affected investor account in which Respondent, or any of its current or former officers or directors, has a financial interest.

(vii) Respondent shall, within 30 days of the entry of this Order, submit a Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondent shall make itself available, and shall require any third-parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the distribution to be available, for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. Respondent also shall provide 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 10 days of the date that the Commission staff notifies Respondent of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(viii) Respondent shall, within 90 days of the written approval of the Calculation by the Commission staff, submit a payment file (the “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 of each affected investor; (2) the exact amount of the

payment to be made; (3) the amount of any *de minimis* threshold to be applied; and (4) the amount of reasonable interest paid.

(ix) Respondent shall complete the disbursement of all amounts payable to affected investors within 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. Respondent shall notify the Commission staff of the date and the amount paid in the initial distribution.

(x) If Respondent is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor or any 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 Exchange Act when the distribution of funds is complete and before the final accounting provided for in Paragraph (xii) of this Subsection C is submitted to the Commission staff. Payment must be made in one of the following ways:

(a) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(b) 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

(c) 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 MMLIS 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 Robert Baker, Assistant Director, Asset Management Unit, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, MA, 02110, or such other address as the Commission staff may provide.

(xi) A Fair 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 all tax compliance responsibilities associated with the Fair Fund, including but not limited to tax obligations resulting from the

Fair Fund's status as a QSF. These responsibilities involve reporting and paying requirements of the Fund, including but not limited to: (1) tax returns for the Fair Fund; (2) information return reporting regarding the payments to investors, as required by applicable codes and regulations; and (3) obligations resulting from compliance with the Foreign Account Tax Compliance Act (FATCA). Respondent may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondent and shall not be paid out of the Fair Fund.

(xii) Within 150 days after Respondent completes the disbursement of all amounts payable to affected investors, Respondent shall return all undisbursed funds to the Commission pursuant to the instruction set forth in this Subsection C. The Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Fair Fund to affected investors in accordance with the Calculation approved by the Commission staff. The final accounting and certification, together with proof and supporting documentation of such payment in a form acceptable to Commission staff, shall be sent to Robert Baker, Assistant Director, Asset Management Unit, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, MA, 02110, or such other address as the Commission staff may provide. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request, and 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 Fair 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 shall comply with the undertakings enumerated in Section III, paragraph 20(a) through (d) above.

By the Commission.

Vanessa A. Countryman
Secretary