

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5767 / July 8, 2021**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20388**

**In the Matter of**

**ST. GERMAIN INVESTMENT  
MANAGEMENT, INC.,**

**Respondent.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS, PURSUANT TO  
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 Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), against St. Germain Investment Management, Inc. (“Respondent” or “St. Germain”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“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 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. These proceedings arise from St. Germain's breach of its fiduciary duty to advisory clients related to the receipt of revenue in connection with clients' cash sweep accounts. Between February 2015 and December 2019 (the "Relevant Period"), the unaffiliated clearing broker St. Germain used for client accounts (the "Clearing Broker") offered various cash sweep vehicles for uninvested cash. Under the terms of an agreement between the Clearing Broker and St. Germain's affiliated broker-dealer, St. Germain Securities, Inc. ("St. Germain Securities"), the Clearing Broker made revenue sharing payments to St. Germain Securities based on the amount of St. Germain's clients' cash invested in the cash sweep vehicle St. Germain used for most client accounts. This presented a conflict of interest because the Clearing Broker offered a cash sweep vehicle that did not result in revenue sharing payments. During the Relevant Period, St. Germain did not adequately disclose the revenue sharing arrangement or the related conflicts of interest to its advisory clients.

2. In addition, St. Germain failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder related to its disclosure of cash sweep revenue sharing and the associated conflicts.

3. As a result of the conduct described above, St. Germain willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

#### Respondent

4. St. Germain is incorporated in Massachusetts and has its principal place of business in Springfield, Massachusetts. St. Germain has been registered with the Commission as an investment adviser since December 30, 1976. As of December 31, 2020, St. Germain reported regulatory assets under management of \$1.976 billion across 5,055 accounts. St. Germain's investment adviser representatives are also registered representatives of St. Germain's affiliated broker-dealer, St. Germain Securities.

#### Other Relevant Entity

5. St. Germain Securities is incorporated in Massachusetts and has its principal place of business in Springfield, Massachusetts. St. Germain Securities is registered with the Commission as a broker-dealer. Prior to September 2010, St. Germain Securities was dually-registered as a broker-

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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.

dealer and investment adviser. Since at least September 2010, St. Germain Securities and St. Germain have been wholly-owned by the same parent company, D.J. St. Germain Co., Inc.

### **Background**

6. St. Germain provides investment advisory services to individuals, charitable organizations, corporations, and other businesses. St. Germain offers investment advisory services to clients on both a non-discretionary and discretionary basis.

7. According to St. Germain's applicable Forms ADV during the Relevant Period, advisory clients paid St. Germain a fee for asset management services of approximately 0.75% to 1.25% of the client's assets under management, including cash balances. Fee percentages varied by client based on the amount and type of assets under management.

8. As an investment adviser, St. Germain was obligated to disclose all material facts to its advisory clients, including any conflicts of interest between itself and its clients. St. Germain was also obligated to disclose all material facts relating to how those conflicts could affect the advice St. Germain provided to its clients. To meet this fiduciary obligation, St. Germain was required to provide its advisory clients with full and fair disclosure that was sufficiently specific so that clients could understand the conflicts of interest concerning St. Germain's investment advice and have an informed basis on which they could consent to or reject the conflicts.

### **Cash Sweep Revenue Arrangement**

9. During the Relevant Period, St. Germain Securities' primary business was acting as the introducing broker for St. Germain's advisory client accounts. In addition, nearly all of St. Germain's client accounts were held in custody with the Clearing Broker, a registered broker-dealer that also cleared transactions in St. Germain's client accounts.

10. Typically, St. Germain's clients opened a brokerage account at the Clearing Broker that held their investments and any cash balances that St. Germain managed. At the time of the account opening, St. Germain or its clients selected a cash sweep vehicle into which uninvested cash balances would be directed (the "Sweep Account").

11. A Sweep Account is used by broker-dealers to hold uninvested cash (e.g., incoming cash deposits, dividends, or investment returns) until the investor or its adviser decides how to invest the money.

12. During the Relevant Period, the Clearing Broker offered several Sweep Account options. The Sweep Accounts varied by type of vehicle (money market fund or FDIC-insured bank deposit account), investment yields, and expenses. For some Sweep Accounts, the Clearing Broker agreed to pay a portion of any revenue it received from the Sweep Account sponsor to financial firms whose clients or customers used the Sweep Account. For other Sweep Accounts, the Clearing Broker did not pay any revenue sharing.

13. In 2009, St. Germain began using an FDIC-insured bank deposit account (the “Deposit Account”) as the default Sweep Account for its advisory clients. During the Relevant Period, pursuant to the clearing agreement between the Clearing Broker and St. Germain Securities, the Clearing Broker made monthly payments to St. Germain Securities of up to 0.30% of the aggregate assets of St. Germain’s clients held in the Deposit Account.

14. During the Relevant Period, the payments St. Germain Securities received from the Clearing Broker relating to the Deposit Account depended on the amount of revenues the Clearing Broker received, which depended on the interest rate the sponsor bank paid on the Deposit Account. Because interest rates fluctuated, the payment streams to the Clearing Broker and St. Germain Securities varied, and payments were lower in periods of lower interest rates. Neither St. Germain nor St. Germain Securities had a role in setting the interest rate on the Deposit Account.

15. During the Relevant Period, the return rates clients received on the Deposit Account that St. Germain used for its clients were reduced by virtue of the revenue stream to the Clearing Broker, a portion of which the Clearing Broker ultimately shared with St. Germain Securities.

16. During the Relevant Period, St. Germain Securities received over \$1.4 million in cash sweep revenue payments related to St. Germain advisory client cash balances in the Deposit Account. This amount of revenue sharing was at least as much as the lost returns to St. Germain’s advisory clients if their cash had been held in a Sweep Account that did not pay revenue sharing. St. Germain Securities no longer receives revenue sharing on Sweep Accounts for St. Germain’s advisory clients.

### **Disclosure Failures**

17. Prior to and as of March 2018, St. Germain disclosed in its Form ADV Part 2A brochures that it provided to clients that it “may utilize . . . funds for cash sweeps” but did not disclose in its Form ADV Part 2A brochures or otherwise that St. Germain Securities received cash sweep revenue sharing from the Clearing Broker.

18. As of February 2019, St. Germain amended its Form ADV Part 2A brochure to state that “St. Germain does receive a monthly payment from its sweep program, which is calculated using a flat 30 bps on the average balance in that product for the monthly period,” but did not identify or address the financial conflict arising from the receipt of cash sweep revenue sharing.

19. In December 2019, St. Germain updated its Form ADV Part 2A brochure to make additional disclosures regarding cash sweep revenue sharing. In particular and among other things, St. Germain’s updated Form ADV Part 2A brochure stated that St. Germain Securities received cash sweep revenue sharing from the Clearing Broker, but that St. Germain and its individual advisory representatives did not receive any portion of that revenue. St. Germain’s updated Form ADV Part 2A brochure also identified the financial conflict of interest arising from the cash sweep

revenue sharing, in that it could cause St. Germain to provide investment advice that was not disinterested regarding the appropriate Sweep Account for clients.

20. In addition, St. Germain's clients typically received a written disclosure statement about the Deposit Account from the Clearing Broker upon the opening of their brokerage account and selection of a cash sweep vehicle. St. Germain had no role in drafting the Clearing Broker's disclosure statement or providing it to clients.

21. During the Relevant Period, the Clearing Broker's disclosure statement indicated that investment professionals such as St. Germain Securities "may" receive fees related to the Deposit Account, when St. Germain Securities in fact did receive revenue payments. In addition, the Clearing Broker's disclosure statement did not address potential conflicts from the perspective of an investment adviser such as St. Germain. Thus, during the Relevant Period, St. Germain could not rely on the Clearing Broker's disclosure statement to provide full and fair disclosure to clients of all material facts regarding cash sweep revenue sharing.

### **Compliance Deficiencies**

22. During the Relevant Period, St. Germain failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with the disclosure of the conflicts of interest presented by its affiliate's receipt of cash sweep revenue sharing.

### **Violations**

23. As a result of the conduct described above, St. Germain 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." 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)).

24. As a result of the conduct described above, St. Germain willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment

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<sup>2</sup> "Willfully," for purposes of imposing relief under 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." *Tagerv. 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).

adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

### **Disgorgement**

25. The disgorgement and prejudgment interest ordered in Section IV.C is consistent with equitable principles and does not exceed the net profits from the violations, 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 Securities Exchange Act of 1934 (“Exchange Act”).

### **Remedial Efforts and Cooperation**

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

### **Undertakings**

27. Within 30 days of the entry of this Order, St. Germain has undertaken to review and correct as necessary all relevant disclosure documents concerning cash sweep vehicles and cash sweep revenue sharing.

28. Within 30 days of the entry of this Order, St. Germain has undertaken to 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 and the rules thereunder in connection with disclosures regarding cash sweep vehicles and cash sweep revenue sharing.

29. Within 30 days of the entry of this Order, St. Germain has undertaken to notify affected investors (*i.e.*, those former and current clients who, during the Relevant Period of inadequate disclosure, held cash balances in the Deposit Account (hereinafter, “affected investors”)) of the 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.

30. Within 40 days of the entry of this Order, St. Germain shall certify, in writing, compliance with the undertakings 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 certification and supporting material shall be submitted to Robert Baker, Assistant Director, Asset Management Unit, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street, 24<sup>th</sup> Floor, Boston, Massachusetts 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.

31. 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, in the public interest, to impose the sanctions agreed to in St. Germain's Offer.

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

A. St. Germain shall 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. St. Germain is censured.

C. St. Germain shall pay disgorgement, prejudgment interest, and a civil penalty, totaling \$1,925,250, as follows:

(i) St. Germain shall pay disgorgement of \$1,443,411 and prejudgment interest of \$181,839, consistent with the provisions of this Subsection C.

(ii) St. Germain shall pay a civil penalty in the amount of \$300,000, 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 ten (10) days of the entry of this Order, St. Germain 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. 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 31 U.S.C. § 3717.

(v) St. Germain 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 St. Germain and shall not be paid out of the Fair Fund.

(vi) St. Germain shall pay from the Fair Fund to each affected investor an amount representing: (a) the revenue sharing payments attributable to the affected investor during the Relevant Period; and (b) reasonable interest paid on such amounts, 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. No portion of the Fair Fund shall be paid to any affected investor account in which St. Germain, or any of its current or former officers or directors during the Relevant Period, has a financial interest.

(vii) St. Germain shall, within thirty (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, St. Germain shall make itself available, and shall require any third-parties or professionals retained by St. Germain 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. St. Germain 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 reasonable objections by the Commission staff to St. Germain’s proposed Calculation or any of its information or supporting documentation, St. Germain 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 the Commission



staff notifies St. Germain of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(viii) St. Germain shall, within ninety (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) St. Germain shall complete the disbursement of 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. St. Germain shall notify the Commission staff of the date and the amount paid in the initial distribution.

(x) If St. Germain 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 St. Germain's control, St. Germain 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 St. Germain 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, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street, 24<sup>th</sup> 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 and the Foreign Account Tax Compliance Act (“FATCA”), and 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 one hundred fifty (150) days after St. Germain completes the disbursement of all amounts payable to affected investors, St. Germain shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. St. Germain 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 the 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 St. Germain 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, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street, 24<sup>th</sup> Floor, Boston, MA 02110, or such other address as the Commission staff may provide. St. Germain 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. St. Germain shall comply with the undertakings enumerated in Section III, paragraphs 27-31, above.

By the Commission.

Vanessa A. Countryman  
Secretary