

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5852 / September 8, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20530

In the Matter of

**PARADIGM WEALTH
ADVISORY, LLC**

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 Paradigm Wealth Advisory, LLC (“Paradigm” 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 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 that

Summary

1. Paradigm Wealth Advisory, LLC, a registered investment adviser, maintained undisclosed investment selection practices that often put clients in higher cost mutual funds than were otherwise available, inadequately disclosed the conflicts of interest associated with these investment selection practices, and inaccurately described the manner in which the firm calculated advisory fees for certain clients who maintained multiple accounts.

2. Paradigm provides advisory services to clients through a wrap fee arrangement. Under the arrangement, Paradigm pays for client trading costs—including transaction fees on mutual fund investments—as part of the overall management fee it charges its clients. From April 2016 through March 2019 (“Relevant Period”), Paradigm avoided paying transaction fees the firm would have been obligated to pay in its investment selections for its advisory clients. For example, Paradigm purchased for its advisory clients mutual fund share classes that charged fees pursuant to Rule 12b-1 of the Investment Company Act of 1940 (“12b-1 fees”) and other fees instead of lower-cost share classes of the same funds that were available to clients for a transaction fee. Although Paradigm did not receive compensation from placing clients in these higher cost share classes, Paradigm's selection of these higher-cost share classes allowed it to avoid transaction costs that it would have otherwise been obligated to pay under its arrangements with clients. Paradigm did not adequately disclose this conflict of interest, and breached its duty to seek best execution for these transactions because it invested clients in higher-cost mutual fund share classes when other share classes of the same funds presented a more favorable value for these clients, under the particular circumstances in place at the time of the transactions.

3. In addition, Paradigm inaccurately disclosed that it aggregated the assets of certain clients who maintained multiple accounts at the firm to determine advisory fees. Because many clients agreed to pay Paradigm a tiered advisory fee with a rate that declined as the value of client assets increased, certain clients who maintained multiple advisory accounts would have benefitted from account aggregation through lower fees. Despite the contrary disclosures, however, Paradigm never aggregated client accounts. Had Paradigm consistently aggregated multiple accounts held by certain clients as disclosed, 63 client accounts would have paid \$19,442.04 less in total advisory fees during the Relevant Period.

4. Furthermore, Paradigm 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 advisory fee calculation procedures.

Respondent

5. Respondent Paradigm Wealth Advisory, LLC, is a Delaware limited liability company based in Bridgewater, New Jersey, that has been registered as an investment adviser with

the Commission since 2016. Paradigm provides advisory services to retail clients through wrap fee arrangements. In its Form ADV, Paradigm disclosed that it managed approximately \$309 million in regulatory assets under management for about 600 clients as of December 31, 2020.

Paradigm's Advisory Business and Relationship with an Unaffiliated Broker-Dealer

6. Paradigm provides advisory services to retail clients with a focus on retirement planning. Client portfolios generally hold three types of asset classes: (a) mutual funds; (b) exchange traded funds; and (c) cash or cash equivalents (such as bank certificates). Paradigm actively manages client assets, trading positions to rebalance or change the underlying investments. Paradigm maintains discretion over the accounts and assesses a wrap fee on all client assets in the account. The fee is calculated as a fixed percentage on the value of the client's assets and the fee covers all transaction costs associated with Paradigm's trading activities in the client's account. Although the wrap fee is subject to negotiation, the fee typically incorporates a tiered structure which reduces the percentage of the fee as a client's assets grow. For clients with multiple accounts, Paradigm applied the tiered fee structure to each account separately rather than aggregating all of the client's assets.

7. Paradigm effects trades in client accounts through an unaffiliated broker-dealer ("B-D U"). Prior to May 2019, B-D U charged Paradigm transaction fees for certain client trades. Until July 2018, B-D U charged Paradigm \$26.50 for any transaction involving an institutional share class of a mutual fund. However, B-D U did not charge Paradigm for purchases and sales of Class A and other higher cost mutual fund share classes on a no-transaction-fee ("NTF") platform it maintained for Paradigm and other investment advisers. Beginning in July 2018, B-D U started expanding its NTF platform to include institutional share classes of certain mutual fund complexes and Paradigm began to convert client mutual fund positions from Class A shares to lower cost share classes.

8. In May 2019, Paradigm and B-D U modified their relationship, eliminating all transaction fees for mutual funds. In lieu of transaction fees, Paradigm agreed to pay a flat fee on client assets custodied at B-D U.

Paradigm's Investment Selection Practices

9. Paradigm developed a practice to select Class A shares of mutual funds over alternatives, such as mutual fund institutional share classes, for a significant portion of client portfolios. During the Relevant Period, Paradigm routinely selected higher cost Class A shares instead of lower cost mutual fund share classes for which clients were eligible, and thereby avoided incurring transaction fees that it otherwise would have had to pay. Paradigm avoided \$323,761 in transaction fees in situations where clients had a lower cost mutual fund share class available to them.

10. Selecting Class A shares or other more expensive share classes allowed Paradigm to avoid paying a transaction fee, but clients paid higher fees because Class A shares are more expensive to hold than institutional or other lower-cost shares. In addition to 12b-1 fees, Class A

shares or other more expensive share classes may also charge other internal fees that reduce fund returns – including sub-TA, administrative, and other fees – that mutual fund complexes may not charge for institutional share classes. In many of the cases in which Paradigm selected more expensive mutual fund share classes, clients were eligible for lower cost institutional shares but acquiring such shares would have required Paradigm to pay a transaction fee. B-D U received and retained the 12b-1 fees that Paradigm clients paid for Class A shares.

Paradigm’s Inadequate Client Disclosures

11. Prior to March 2019, Paradigm did not adequately disclose the conflict associated with its selection of mutual fund share classes in its Form ADV or otherwise. For example, the firm’s April 25, 2016, Form ADV Part 2A brochure stated that Paradigm “may have a financial incentive to limit transactions in [c]lient accounts as each trade will increase costs to Paradigm.” The wrap fee program brochure also stated that clients should expect to pay a higher overall advisory fee to participate in the wrap fee program because Paradigm pays transaction fees, noting that “[c]lients should discuss the expected level of trading” in their accounts. Although these disclosures related to trading activity in client accounts, they failed to address Paradigm’s practices to choose higher cost Class A shares available on B-D U’s NTF platform rather than other available mutual fund share classes. Another section of the brochure acknowledged that Paradigm clients would pay “separate and distinct” charges for mutual funds, but failed to reveal that these fees may be higher than they otherwise could have been had Paradigm selected lower cost mutual fund share classes.

Paradigm’s Best Execution Failures

12. An investment adviser’s fiduciary duty includes, among other things, an obligation to seek best execution for client transactions.¹

13. Paradigm caused certain advisory clients to invest in certain mutual fund share classes that charged higher expenses when share classes of the same funds were available to the clients that presented a more favorable value under the particular circumstances at the time of the transactions. As a result, Paradigm violated its duty to seek best execution for those transactions.

Paradigm’s Account Aggregation Practices and Disclosures

14. Paradigm did not accurately describe its account aggregation practices in its Forms ADV or elsewhere. During the Relevant Period, Paradigm’s Form ADV Part 2A brochures stated that the firm aggregated client accounts for purposes of tiered billing on aggregate assets. For example, Paradigm’s April 2016 brochure states that Paradigm calculates the advisory fee based on “the [client’s] total assets under management with Paradigm.” The brochure and wrap fee program brochure also noted that advisory fees “will take into consideration the aggregate assets under management” with Paradigm. The wrap fee program brochure similarly stated that “[f]ees are based on the market value of assets under management

¹ 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).

at the end of the quarter.” It also noted that advisory fees take into account a variety of factors, including “the overall size of the relationship.” These disclosures were misleading because Paradigm never aggregated client accounts for billing purposes itself.

15. Certain Paradigm clients opted to have their assets separated into multiple individual accounts. However, clients with multiple accounts were not told that the brochure disclosures concerning the aggregation were inaccurate because neither Paradigm nor B-D U was calculating client fees based on their total assets. In addition, those clients were not told that they would be disadvantaged in opening separate accounts to implement Paradigm’s investment advice because they may not have been able to receive the full benefits of the breakpoints in Paradigm’s tiered fee schedule. Sixty-three client accounts would have benefitted from account aggregation, reducing their fees by \$19,442.04, during the Relevant Period.

Compliance Deficiencies

16. During the Relevant Period, Paradigm 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: (a) disclosure of conflicts of interest presented by its investment selection practices, or in connection with making recommendations of investments that were in the best interests of its advisory clients; and (b) accurate disclosure of advisory fee rates for clients with multiple accounts.

Violations

17. As a result of the conduct described above, Respondent willfully² 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), 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)).

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

² “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.” *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[ted]” 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

19. The disgorgement and prejudgment interest ordered in Section IV.C. is consistent with equitable principles and does not exceed Respondent's net profits from its 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 may be transferred by the Commission to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934 ("Exchange Act").

Paradigm's Remedial Efforts

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

Undertakings

21. Respondent has undertaken to:

a. Within 30 days of the entry of this Order, Respondent shall notify affected clients (*i.e.*, those former and current clients that maintained accounts at any time between April 2016 and March 2019, who, during the Relevant Period (i) purchased or held 12b-1 fee paying share class mutual funds when a lower-cost share class of the same fund was available to the client and/or (ii) maintained multiple accounts that would have received a reduced advisory fee) (hereinafter, "Affected Clients") of the settlement terms of this Order in a clear and conspicuous fashion.

b. Within 40 days of the entry of this Order, certify, in writing, compliance with the undertaking set forth above. The certification shall identify the undertaking, 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 David A. Becker, Assistant Director, Asset Management Unit, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, 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 Paradigm's Offer.

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

A. Respondent Paradigm 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. Respondent Paradigm is censured.

C. Respondent Paradigm shall pay disgorgement of \$343,203.04 and prejudgment interest of \$46,900.94 consistent with the provisions of this Subsection C:

(i) Respondent shall pay disgorgement of \$343,203.04 and prejudgment interest of \$46,900.94, less monies already distributed to Affected Clients (the "Distribution Fund"), into an escrow account at a financial institution not unacceptable to the Commission staff, and Respondent shall provide evidence of such deposit in a form acceptable to the Commission staff. Payment shall be made in the following installments:

- a. \$200,000 within ten (10) days of date of this Order ("Order Date").
- b. \$60,000 within three (3) months of the Order Date.
- c. \$60,000 within six (6) months of the Order Date.
- d. \$60,000 within nine (9) months of the Order Date.
- e. \$10,103.98 within twelve (12) months of the Order Date.

Payments shall be applied first to post-order interest, which accrues pursuant to SEC Rule of Practice 600 and pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

(ii) Respondent shall be responsible for administering the Distribution Fund and may hire a professional 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.

(iii) Respondent shall distribute from the Distribution Fund to Affected Clients an amount representing: (a) the difference in expense ratio between the investment product a client received and the lower cost investment product available, (b) the difference in advisory fee related to account aggregation attributable to each Affected Client, and (c) reasonable interest paid on such expenses and fees, 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 Distribution Fund shall be

paid to any Affected Client account in which Respondent, or any of its current or former officers or directors, has a financial interest.

(iv) Respondent shall, within 360 days from the date of this Order, submit the Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Distribution Calculation to the staff, Respondents shall make themselves available, and shall require any third-parties or professionals retained by Respondents 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.

(v) Respondent shall, within 120 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 Client. The Payment File should identify, at a minimum, (1) the name of each Affected Client; (2) the exact amount of the payment to be made, less any tax withholding; (3) the amount of any *de minimis* threshold to be applied; and (4) the amount of reasonable interest to be paid.

(vi) Respondent shall complete the disbursement of all amounts payable to Affected Client accounts within 90 days of the date the Commission staff accepts the Payment File, unless such time period is extended as provided in Paragraph x of this Subsection C. Respondent shall notify the Commission staff of the date(s) and the amount paid in the initial distribution.

(vii) If Respondent is unable to distribute or return any portion of the Distribution Fund for any reason, including an inability to locate an Affected Client or a beneficial owner of an Affected Client or any other 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 once the distribution of funds is complete and before the final accounting provided for in Paragraph ix 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 Paradigm Wealth Advisory, LLC as 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 David A. Becker, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

(viii) A 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 agrees to be responsible for all tax compliance responsibilities associated with the "Distribution Fund's status as a QSF. These responsibilities involve reporting and paying requirements of the Distribution Fund, including but not limited to: (1) tax returns for the Distribution Fund; (2) information return reporting regarding the payments to Affected Clients, 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 tax compliance, including any such professional services, shall be borne by Respondent and shall not be paid out of the Distribution Fund.

(ix) Within 150 days after Respondent completes the disbursement of all amounts payable to Affected Clients, Respondent shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Distribution Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each Affected Client, with reasonable interest, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of money transferred or credited to each Affected Client; (4) the amount of any returned payment and the date received; (5) a description of any effort to locate an Affected Client 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 Distribution Fund to Affected Clients in accordance with the Payment File

accepted by the Commission staff. Respondent shall submit the final accounting and certification, together with proof and supporting documentation of such payment in a form acceptable to Commission staff, under a cover letter that identifies Paradigm Wealth Advisory, LLC as the respondent in these proceedings and the file number of these proceedings to David A. Becker, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549, or such other address as 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.

(x) 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 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 Paradigm shall pay, within twelve (12) months of the date of this Order, a civil money penalty in the amount of \$50,000.00 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). Interest shall accrue pursuant to 31 U.S.C. §3717 beginning on the Order Date and shall be added to the civil penalty amount. Payment 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 Paradigm Wealth Advisory, LLC as 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 David A. Becker, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

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.

F. Respondent shall comply with the undertakings enumerated in Section III, Paragraph 21.a and 21.b above.

By the Commission.

Vanessa A. Countryman
Secretary