

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11085 / July 28, 2022

SECURITIES EXCHANGE ACT OF 1934
Release No. 95389 / July 28, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 6075 / July 28, 2022

INVESTMENT COMPANY ACT OF 1940
Release No. 34655 / July 28, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20939

In the Matter of

PAUL F. GALLIVAN,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE AND
CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTION 15(b) OF
THE SECURITIES EXCHANGE ACT OF 1934,
SECTION 203(f) OF THE INVESTMENT
ADVISERS ACT OF 1940, AND SECTION 9(b) OF
THE INVESTMENT COMPANY ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-AND-
DESIST ORDER**

I.

The Securities and Exchange Commission (the “Commission” or “SEC”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”), against Paul F. Gallivan (“Gallivan” 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 purposes 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 him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V., Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 15(b) of the Securities Exchange Act of 1934, Section 203(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment

Company 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 the Offer, the Commission finds¹ that:

SUMMARY

1. These proceedings arise from unsuitable recommendations and misrepresentations to certain retail customers by Paul F. Gallivan in connection with sales of highly-complex, variable interest rate structured products (“VRSPs”).

Respondent

2. Gallivan, 49, is a resident of Del Ray Beach, Florida. Gallivan has been a registered representative since 2010 and an investment adviser representative since 2015. Gallivan was associated with Aegis Capital Corp., a registered broker-dealer and investment adviser, from August 2017 to September 2020. He holds FINRA Series 7, 63, and 66 licenses.

Gallivan Made Unsuitable Recommendations of VRSPs

3. Registered Representatives (“RRs”) have a fundamental responsibility to deal fairly with their customers. This responsibility of fair dealing requires that prior to recommending a security to a customer, RRs must make a determination that a particular investment is suitable for that customer in light of the customer’s investment objectives, as determined by the customer’s financial needs and financial condition, which include, among other things, risk tolerance, age, investment experience, and/or investment time horizons. *See Steven E. Muth and Richard J. Rouse*, Exchange Act Rel. No. 52551, at *18 (Oct. 3, 2005) (Comm. Op.). RRs who make unsuitable recommendations may violate the anti-fraud provisions of the federal securities laws, including Securities Act Sections 17(a)(2) and 17(a)(3).

4. From October 2017 through December 2018, Gallivan made unsuitable recommendations of VRSPs to four customers. Most of the customers were senior investors with low or moderate risk tolerances; limited investment experience with structured products; investment time horizons of less than fifteen years; and moderate or higher liquidity needs. The customers also were unwilling to risk losing their entire invested principal from their investments, and they relied on periodic interest payments from their investments to meet their income needs.

5. In recommending VRSPs to the customers, Gallivan described the securities as being similar to “bank bonds.” However, the VRSPs differed from traditional bonds issued by financial institutions in several important ways. First, unlike traditional bonds, which provide periodic fixed-interest payments that are directly linked to a bond issuer’s ability to make periodic payments and

¹ The findings herein are made pursuant to Respondent’s Offer and are not binding on any other person or entity in this proceeding or any other proceedings.

which repay principal at maturity, the VRSPs offer variable interest payments based on formulas tied to differences in Constant Maturity Swap (“CMS”) rates for longer term and shorter term United States Treasury obligations, as well as to the performance of reference assets, such as certain equity indexes.

6. The VRSPs initially pay fixed introductory or “teaser” rates for one to five years. After the introductory period, additional interest payments are not guaranteed and are contingent on the performance and interplay of the VRSPs derivative components such as the CMS rates and underlying reference indexes. These characteristics contribute to their unsuitability for the customers, who relied on periodic interest payments from their investments to meet their income needs.

7. In addition, most of the VRSPs sold to the customers have maturity periods of fifteen years or more and typically lack active secondary markets, with no assurance of liquidity. These characteristics contribute to their unsuitability for the customers, who had investment time horizons of less than fifteen years and moderate or higher liquidity needs.

8. Also unlike traditional bonds, the VRSPs are “principal-at-risk” securities, which means that the customers can lose some or all of their invested principal at maturity if the VRSPs’ respective reference assets fail to perform within pre-determined ranges at maturity. As several preliminary prospectuses for the VRSPs expressly warn: “There is no minimum payment at maturity. Accordingly, investors may lose up to their entire initial investment in the securities.” This characteristic contributes to their unsuitability for the customers, who were unwilling to risk losing their entire invested principal from their investments.

Gallivan Made Misrepresentations about the VRSPs to Customers

9. Gallivan made misrepresentations about the risks and characteristics of the VRSPs. Gallivan’s material misrepresentations to customers include a:

- a) May 2018 email, in which Gallivan wrote to a customer, “You will see that your actual “[sic] par amount is 154,000. This is the amount that the issuers will be paying you if they call the bonds in early or if we hold them to their final maturity dates. All of your bonds are callable at par/100 cents on the dollar.”; and
- b) May 2018 email, in which Gallivan wrote to another customer, “you will see your actual par-amount-\$102k. This is what your bond are worth if the[y] are called in earlier by the issuer or if they are held to their finally [sic] maturity date.”

10. Each of Gallivan’s foregoing statements was materially false and misleading. Gallivan knew or reasonably should have known at the time that he made these statements that VRSPs are not principal protected.

11. By the foregoing conduct, Gallivan willfully violated Securities Act Sections 17(a)(2) and 17(a)(3).

12. The disgorgement and prejudgment interest ordered in Section IV.E. below is consistent with equitable principles and does not exceed Respondent's net profits from its violations and will be distributed to harmed investors, if feasible. The Commission will hold funds paid pursuant to Section IV.E. in an account at the United States Treasury pending a decision whether the Commission in its discretion will seek to distribute funds. If a distribution is determined feasible and the Commission makes a distribution, 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.

Undertaking

13. Gallivan has undertaken to provide the Commission, within thirty days after the end of the twelve-month suspension period described below, an affidavit attesting that he has complied fully with the sanctions described in Sections IV.B. through IV.D., below.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Gallivan's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Section 15(b) of the Exchange Act, Section 203(f) of the Advisers Act, and Section 9(b) of the Investment Company Act it is hereby ORDERED that:

A. Gallivan shall cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act;

B. Gallivan be, and hereby is, suspended from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for twelve months, effective on the second Monday following the entry of this Order.

C. Gallivan be, and hereby is, suspended from participating, directly or indirectly, in any offering of a penny stock, including: acting directly or indirectly as a promoter, finder, consultant, agent or other person who engages in activities with another broker, dealer or issuer for purpose of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock for a period of twelve months, effective on the second Monday following the entry of this Order.

D. Gallivan is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter for a period of twelve months, effective on the second Monday following the entry of this Order.

E. Gallivan shall pay disgorgement of \$26,807, prejudgment interest of \$3,166, and a civil money penalty in the amount of \$25,000 to the SEC. Payment shall be made in the following installments:

1. \$15,000 within 10 days of the entry of the Order; and
2. \$15,000 within 90 days of the entry of the Order; and
3. \$15,000 within 180 days of the entry of the Order; and
4. final payment within 270 days of the entry of the Order (see below).

Payments shall be applied first to post-order interest, which accrues pursuant to SEC Rule of Practice 600 and 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.

Payments 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 (for transfer to the general fund of United States Treasury in accordance with Exchange Act Section 21F(g)(3))" 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.

A payment made by check or money order must be accompanied by a cover letter identifying Paul F. Gallivan 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 Yuri B. Zelinsky, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549-5041.

F. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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, he shall not argue that he is entitled to, nor shall he 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 he 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.

G. Gallivan shall comply with the undertaking enumerated in Section III.13., above.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Gallivan, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Gallivan under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Gallivan of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary