

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94978 / May 25, 2022

INVESTMENT COMPANY ACT OF 1940
Release No. 34592 / May 25, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20871

<p>In the Matter of</p> <p>RiverSource Distributors, Inc.</p> <p>Respondent.</p>

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 15(b)(4) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 9(f) 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 (“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)(4) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 9(f) of the Investment Company Act of 1940 (“Investment Company Act”), against RiverSource Distributors, Inc. (“RDI” or “Respondent”).

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 Section 15(b)(4) of the Securities Exchange Act of 1934 and Section 9(f) 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 Respondent's Offer, the Commission finds that:

Summary

1. These proceedings involve violations of Section 11 of the Investment Company Act ("Section 11") by RDI, a principal underwriter of variable annuities. Variable annuities are complex securities generally considered long-term investments. RDI offered and sold variable annuities to retail investors through Ameriprise Financial Services, LLC ("AFS"), an affiliated broker-dealer/investment adviser. Section 11 prohibited RDI, as an underwriter, from making or causing to be made an offer to exchange a variable annuity issued by RiverSource Life for another variable annuity issued by RiverSource Life unless the offer had been approved by the Commission or fell within limited exceptions. Between January 2017 and May 2018 ("Relevant Period"), RDI violated Section 11 by its wholesalers' efforts developing lists of in-force annuities for the purpose of identifying potential variable annuity exchange opportunities among existing annuity holders and then using those lists in an attempt to encourage AFS registered representatives to offer variable annuity replacements to its retail customers. RDI wholesalers did so amidst downward pressures in its variable annuity business, and variable annuity exchanges increased during the Relevant Period.

Respondent

2. **RiverSource Distributors, Inc.** ("RDI") is a registered broker-dealer headquartered in Minneapolis, Minnesota, and a wholly-owned subsidiary of Ameriprise Financial, Inc. ("Ameriprise"), a publicly-traded company. RDI is a principal underwriter of variable annuities issued by RiverSource Life.

Other Relevant Entities

3. **Ameriprise Financial Services, LLC** ("AFS") (formerly known as "Ameriprise Financial Services, Inc.") is dually registered with the Commission as a broker-dealer and investment adviser and is an RDI affiliate. AFS, through its registered representatives, offered and sold variable annuities to investors.

4. **RiverSource Life Insurance Company** ("RiverSource Life") issues variable annuities and is a wholly-owned subsidiary of Ameriprise. RiverSource Life issued variable annuities underwritten by RDI and offered and sold by AFS to investors.

Facts

5. RDI generated the majority of its revenues from variable annuities during the Relevant Period. Variable annuities are complex securities pursuant to which customers enter into long-term contracts with an issuing company like RiverSource Life. Variable annuities entitle customers to certain payments depending on the terms of the contract and performance of an underlying portfolio of securities. Variable annuities often have surrender periods, before the end of which customers must pay a fee for selling or exchanging their annuity contract.

6. RDI offered and sold variable annuities to retail investors through AFS, an affiliated broker-dealer/investment adviser. To support these efforts, RDI employed a team of approximately forty wholesalers. RDI wholesalers were responsible for assisting AFS registered representatives to understand these complex financial instruments. RDI wholesalers received commissions from the sale of variable annuities underwritten by RDI. Given adverse market dynamics, RDI's variable annuity business experienced downward pressures in the years leading up to the Relevant Period.

7. During the Relevant Period, certain RDI wholesalers developed and implemented a sales practice that involved the creation of lists of variable annuities that were still in effect and owned by AFS customers, and then color-coding those lists to highlight exchange opportunities, including information about commissions from exchanges that could be earned by AFS registered representatives. Some RDI wholesalers were trained on how to create and use these "in-force" annuity lists. For example, at a meeting in June 2017, attended by members of the wholesaling department, an RDI wholesaler presented on how to create in-force annuity lists by pulling the AFS registered representatives' book of business and then filtering it so only annuities underwritten by RDI were left on the list. The list would then be color-coded based on the compensation that AFS registered representatives would receive if the variable annuity was exchanged.

8. The AFS registered representatives' compensation depended, in part, on whether the annuity contract was out of the surrender period or how long it had been out of that period. Depending on the annuity, if the contract was out of the surrender period or had been out of that period for a certain number of years, AFS registered representatives would receive full compensation on any exchange. On contracts that were not out of the surrender period or had not been out of this period for the requisite number of years, the registered representative's compensation would be reduced.

9. Following the June 2017 meeting, a senior divisional sales director of RDI asked for a copy of material referenced in the training program to provide to other wholesalers for their use. In response, he was provided a list of certain annuity holders that was color-coded based on the annuity's surrender status and sorted from largest annuity to smallest annuity and highlighting how exchanging the annuities would affect the AFS registered representative's compensation. An RDI wholesaler provided additional training on the creation and use of in-force annuity lists at a January 2018 national sales conference for wholesalers.

10. Through their efforts, certain RDI wholesalers caused exchange offers to be made to holders of variable annuities during the Relevant Period. These efforts included in-person and virtual meetings with AFS registered representatives during which RDI wholesalers were granted access to the AFS registered representatives' computers, pulled customer lists and holdings, filtered the lists to focus on in-force annuities, and color-coded variable annuities based on their surrender status in order to highlight how registered representatives could increase their compensation. Subsequent to these meetings, certain individuals exchanged their variable annuities.

11. Variable annuity exchanges increased during the Relevant Period from \$671 million in 2015 and \$768 million in 2016, to \$1,006 million in 2017 and \$1,049 million in 2018. Contemporaneous RDI emails and other internal documents suggest that at least some portion of that increase likely resulted from the use of in-force annuity lists. For example, after the June 2017 meeting, internal RDI documents indicate wholesalers exceeding sales projections for annuity exchanges. In August 2017, a Division Vice President of RDI asked wholesalers via email if they could share what was working for them to drive sales and one responded that he was using in-force annuity lists to find exchange opportunities. In October 2017, a wholesaler explained in an internal email that in-force annuity exchange lists were among the strategies he was using.

12. RDI's compliance department became aware of the RDI wholesalers' efforts and use of lists in or around March 2018, conducted an investigation, and as a result of the investigation, wholesalers who were involved in the conduct and/or those who supervised individuals involved in the conduct received letters of reprimand/caution in May 2018. RDI's remedial efforts to end the practice included a training program for wholesalers during which its Chief Compliance Officer explained in detail how the creation and use of these types of in-force annuity lists violated the principles of Section 11. After the Relevant Period, RDI's variable annuity exchanges decreased from \$1,049 million in 2018 to \$838 million in 2019.

* * *

13. As a result of the conduct described above, RDI willfully¹ violated Section 11 of the Investment Company Act, which prohibits any principal underwriter to make or cause to be made an offer to exchange the securities of registered unit investment trusts (including variable annuities) unless the terms of the offer have been approved by the Commission or fall within limited exceptions not applicable to RDI.

IV.

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

Accordingly, pursuant to Section 15(b)(4) of the Exchange Act and Section 9(f) of the Investment Company Act, it is hereby ORDERED that:

¹ "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act "means no more than that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

- A. RDI cease and desist from committing or causing any violations and any future violations of Section 11 of the Investment Company Act;
- B. RDI is censured.
- C. RDI shall, within twenty (20) days of the entry of this Order, pay a civil money penalty in the amount of \$5,000,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying RDI 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 Reid A. Muoio, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

- D. 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.

By the Commission.

Vanessa A. Countryman
Secretary