UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95046 / June 6, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 6044 / June 6, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20881

In the Matter of **KATHRYN JANE MEREDITH, d/b/a KM ADVISORY SERVICES,** **Respondent.**	**CORRECTED ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 203(e), 203(f) 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 Kathryn Jane Meredith, d/b/a KM Advisory Services ("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 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 finds[1] that

Summary

1. These proceedings arise out of breaches of fiduciary duties by former registered investment adviser KM Advisory Services ("KMA"), an unincorporated sole-proprietorship owned by Kathryn Jane Meredith ("Meredith") from 1994 through February 2020, in connection with KMA's receipt of mutual fund fees pursuant to Rule 12b-1 under the Investment Company Act of 1940 ("12b-1 fees") and commissions in the form of sales "loads" from advisory client investments without fully and fairly disclosing its related conflicts of interest. Since at least January 2016, KMA invested the vast majority of clients' assets in certain mutual funds that paid 12b-1 fees and charged sales load commissions exclusively through an introducing broker-dealer (the "Introducing Broker-Dealer"), with whom Meredith was a registered representative. As a result, KMA's clients paid 12b-1 fees and commissions to the Introducing Broker-Dealer, a portion of which were shared with KMA. KMA failed to fully and adequately disclose this arrangement and the conflicts of interest arising therefrom. KMA also breached its duty of care by not routinely comparing the Introducing Broker-Dealer's order execution with other broker-dealers, which KMA's advisory relationship with its clients required. KMA therefore caused its advisory clients to invest through the Introducing Broker-Dealer and in share classes of mutual funds that charged 12b-1 fees when other broker-dealers made available share classes of the same funds to their customers that may have presented a more favorable value for KMA's clients under the particular circumstances in place at the time of the transactions. KMA, although eligible to do so, did not self-report to the Commission, pursuant to the Division of Enforcement's (the "Division") Share Class Selection Disclosure Initiative ("SCSD Initiative").[2] Furthermore, KMA 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 and broker-dealer selection practices. As a result of the conduct described above, KMA willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondent

2. KM Advisory Services was an investment adviser operating as a sole proprietorship with a primary place of business in Victor, New York. Meredith, 78 years old, founded KMA in 1994 and owned it through February 2020. KMA was registered with the Commission as an investment adviser from 1996 until August 2021, when it ceased operations and filed a Form ADV-W. As of February 2020, when Meredith sold KMA, KMA managed 216 advisory clients with over $167 million in assets. Meredith currently resides in Palmetto, Florida. Meredith previously held Series 7, 24 and 63 licenses and had been a registered representative of the Introducing Broker-Dealer from 1994 until November 2021.

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[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.

[2] See Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Share Class Selection Disclosure Initiative, https://www.sec.gov/enforce/announcement/scsd-initiative (last modified Feb. 12, 2018).

Facts

Background on Mutual Fund Share Classes

3. Mutual funds offer investors different "share classes." Each share class represents an interest in the same portfolio of securities with the same investment objective. The primary difference among the share classes is the fee structure. For example, some mutual fund share classes have 12b-1 fees or shareholder servicing fees to cover fund distribution or sometimes shareholder services (hereinafter, "Retail Class"). The 12b-1 fees are included in a mutual fund's total annual fund operating expenses for that class, and typically range from 0.25% to 1%. The 12b-1 fees are deducted from the mutual fund's assets attributed to that class on an ongoing basis and paid to the fund's distributor or principal underwriter, which generally remits the 12b-1 fees to the broker-dealer that distributed or sold the shares. Certain Retail Classes charge a fee or a sales load that is calculated as a percentage of the purchase amount when investors buy shares of the fund (a "front-end load"). Front-end loads may have discounts (referred to as "breakpoints") available to the investor as a result of the total amount invested. Another type of Retail Class charges a contingent deferred sales charge ("CDSC"), a deferred sales charge the purchaser pays if the purchaser sells the shares during a specified time period following the purchase.

4. Many mutual funds also offer share classes that charge lower fees overall and that do not charge 12b-1 or shareholder servicing fees (e.g., "Institutional Class" or "Class I" shares (collectively, "Class I shares")) or that waive sales loads ("Load-Waived shares"). An investor who holds Class I shares of a mutual fund will usually pay lower total annual fund operating expenses – and thus will almost always earn higher returns over time – than one who holds a Retail Class of the same fund. Therefore, if a mutual fund offers a Class I share, and an investor is eligible to own it, it is often, though not always, better for the investor to purchase or hold the Class I share. Similarly, if a mutual fund offers Load-Waived share classes, and an investor is eligible to own it, it is often, though not always, better for the investor to purchase the Load-Waived share class instead of the share class that charges sales loads. The cost of owning shares of a mutual fund will depend on the expense ratio of the particular share class and any sales loads or charges.

KMA's Business

5. Meredith established KMA as a sole proprietorship in 1994 to provide financial planning services (e.g. retirement planning, estate planning and tax consulting services) and also investment advisory services on a discretionary basis to individual clients. Except for its services rendered to retirement plan clients, which accounted for roughly 10% to 20% of KMA's business, KMA exclusively used the Introducing Broker-Dealer. The Introducing Broker-Dealer used a clearing broker that provided the Introducing Broker-Dealer with access to a variety of mutual fund share classes, including I Class shares and Load-Waived shares for advisory clients. However, the Introducing Broker-Dealer, which is dually-registered as a broker-dealer and investment adviser with its own advisory platform, limited access to I Class shares and Load-Waived Shares to clients with accounts on its advisory platform; the Introducing Broker-Dealer provided only Retail Class shares to brokerage account holders. As such, the Introducing Broker Dealer did not allow KMA to select I Class shares and Load-Waived shares for its clients.

6. Since at least January 2016 and continuing through February 2020 when Ms. Meredith sold her interests in KMA (the "Relevant Period"), prospective KMA non-retirement plan advisory clients with mutual fund assets to be under KMA's management were required to open brokerage accounts at the Introducing Broker-Dealer with Meredith as the Introducing Broker-Dealer's registered representative. Because of this arrangement, only Retail Class shares were available to these clients.

7. KMA derived its revenue from four sources: (1) a disclosed advisory fee of 0.5% of clients' assets under management; (2) one-time financial planning fees paid by clients at the onset of the advisory relationship; (3) 12b-1 fees that its clients paid from their mutual fund holdings; and (4) sales loads its clients paid on mutual fund purchases. During the Relevant Period, KMA received advisory fee revenue directly in a bank account in Meredith's and KMA's name, and the Introducing Broker-Dealer received 12b-1 fee payments and sales loads from KMA's clients' accounts. Per agreement between Meredith and the Introducing Broker, the Introducing Broker-Dealer shared with Meredith the 12b-1 fee payments and sales loads in her capacity as a registered representative. Meredith's portion of the 12b-1 fees and sales load commissions were remitted to a bank account held by KMA's business operating entity, which Meredith owned. The Introducing Broker-Dealer retained a portion the 12b-1 fee payments and sales loads for itself.

8. During the Relevant Period, the vast majority of advisory assets that KMA recommended that its clients purchase were mutual fund share classes that charge sales loads and/or 12b-1 fees. Specifically, during the Relevant Period, KMA placed the majority of client assets in C Class shares, which typically charge 12b-1 fees of 1% on client holdings and charge a 1% CDSC for a specified time period. KMA placed the remaining client assets in A Class shares, which typically charge sales loads of 5% at the time of purchase and 12b-1 fees of 0.25% per year on client holdings. In most instances, KMA recommended A Class shares only when the client was eligible for a discount due to a breakpoint, which reduced the cost to the client of holding A Class shares. Most clients paid sales loads of 3.5% or less, and some paid sales loads of 0%.

9. During the Relevant Period, KMA stated to its clients that it would "routinely" compare the Introducing Broker-Dealer's order execution with other broker-dealers to "ensure" that the Introducing Broker-Dealer remained competitive in providing best execution for KMA's clients, but KMA did not routinely do so. KMA analyzed mutual fund share classes available at other broker-dealers only once (in August 2017). In connection with this analysis, KMA did not assess the impact of using another broker-dealer on any actual KMA client accounts. During the Relevant Period, KMA did not recommend that its clients open accounts with another broker-dealer that would provide clients with access to Load-Waived Shares or share classes that do not charge 12b-1 fees.

10. During the Relevant Period, KMA derived a significant percentage of its revenue from 12b-1 fees. During the Relevant Period, Meredith received a significant percentage of her total compensation from 12b-1 fees and sales loads that the Introducing Broker-Dealer charged KMA's advisory clients.

KMA's Disclosure Failures

Disclosures Regarding KMA's Receipt of 12b-1 Fees

11. KMA represented in its Form ADV Part 2A Brochures ("Brochures") from at least January 2016 through March 2019 that:

> "Although not a material consideration in recommending and/or selecting a particular mutual fund for the Account, KMA and its Advisors may receive a portion of the 12b-1 distribution fees or other fees imposed by the mutual fund and paid by the mutual fund or one of their affiliates…"

Elsewhere the Brochures stated "[Introducing Broker-Dealer], as well as KMA's Advisors, may receive additional ongoing 12b-1 trail commissions on mutual fund purchases during the period that the client maintains the mutual fund investment."

12. These disclosures did not adequately disclose all material facts regarding the conflicts of interest that arose when it invested advisory clients through the Introducing Broker-Dealer in a mutual fund share class that would generate and pay 12b-1 fees to KMA while share classes of the same funds were available through other broker-dealers that did not pay or paid less 12b-1 fees. In addition, KMA's disclosures stated that it "may receive a portion of the 12b-1 distribution fees" when it actually did and would receive a portion of the 12b-1 fees KMA's clients paid.

13. In October 2019, KMA amended its Brochure disclosures related to 12b-1 fee revenue to state the following:

> "Through [Introducing Broker-Dealer], mutual fund investments can be invested in various share classes: A, B, C, and M. These share classes have different [characteristics] that can include up-front commission charges and back-end sales charges. In addition, these share classes include l2b-l fees that are paid to the broker dealer and the advisor… Clients are able to purchase the same or similar products through other brokers and investment advisors. Other brokers and investment advisors may offer shares class options that have a lower cost. For example, KMA does not have access to institutional, advisor or clean share classes. Similarly, investment advisory service fees charged by other investment advisors may be similar to or lower than the fees that KMA charges."

KMA's revised disclosures, while an improvement, still did not adequately disclose all material facts regarding the conflicts of interest that arose when it invested advisory clients through the Introducing Broker-Dealer in a mutual fund share class that would generate and pay 12b-1 fees to KMA while share classes of the same funds were available through other broker-dealers that did not pay or paid less 12b-1 fees.

Disclosures Regarding KMA's Receipt of Commissions and Selection of the Introducing Broker-Dealers

14. KMA's advisory agreements during the Relevant Period stated that:

> "You have no obligation to implement recommendations by executing transactions through [Introducing Broker-Dealer]. The Financial Advisor generally seeks competitive commission rates. . . If you choose to effect transactions with [Introducing Broker-Dealer], the Financial Advisor may act as a Registered Representative of [Introducing Broker-Dealer]. In connection with those transactions, [Introducing Broker-Dealer] may collect transaction fees, and the Financial Advisor may receive commissions."

15. KMA similarly stated in its Brochures during the Relevant Period that:

> "Should the client desire, they could engage KMA's Advisor, Kathryn J. Meredith, in her individual capacity as a registered representative of [Introducing Broker-Dealer] to implement investment recommendations on a commission basis. Clients choosing to purchase investment products through [Introducing Broker-Dealer] will be charged brokerage commissions to effect these securities transactions."

16. KMA's Brochures during the Relevant Period further stated that "KMA's Advisors may recommend other broker/dealers to their advisory clients." However, during the Relevant Period, KMA required its non-retirement plan advisory clients with mutual fund assets to open brokerage accounts at the Introducing Broker-Dealer and never recommended any other broker-dealer besides the Introducing Broker-Dealer to its non-retirement plan advisory clients with mutual fund assets. In addition, KMA's disclosures in its advisory agreements stated that it "may receive commissions" when it actually did and would receive commissions in the form of sales loads.

Duty of Care Failures

17. An investment adviser's fiduciary duty also includes a duty of care. To fulfill this obligation, an adviser, among other things, must provide investment advice in the best interest of its client based on the client's objectives and seek best execution for client transactions.

18. KMA's advisory relationship with its clients specifically required it to "routinely compare the order execution disclosure information of [Introducing Broker-Dealer] and [its clearing firm] to other broker/dealers to ensure that [Introducing Broker-Dealer] and [its clearing firm] remain competitive in providing best execution for their clients." During the Relevant Period, KMA did not routinely conduct comparisons of the Introducing Broker-Dealer's execution with other broker-dealers.

Compliance Deficiencies

19. During the Relevant Period, KMA 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 conflicts of interest that arose from its mutual fund and mutual fund share class selection practices or (2) seeking best execution for client transactions in connection with selecting a broker-dealer for its advisory clients.

Disgorgement

20. The disgorgement and prejudgment interest ordered in Section IV is consistent with equitable principles and does not exceed the Respondent's net profits from the violations, and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid pursuant to Section IV in an account at the United States Treasury pending 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.

Violations

21. As a result of the conduct described above, Respondent willfully 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)).

22. 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.

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), 203(f) 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, within 10 days of the entry of this Order, pay disgorgement, prejudgment interest and civil money penalties as follows:

(1) Respondent shall, within 10 days of the entry of this order, pay disgorgement of $574,743.53 and prejudgment interest of $77,252.39 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

(2) Respondent shall, within 10 days of the entry of this order, pay a civil money penalty in the amount of $100,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

(3) 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 Kathryn Jane Meredith d/b/a KM Advisory Services 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 Andrew B. Dean, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

(5) 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 referenced in this Section IV, paragraph C and

combined with the Fair Fund established in the Commission's simultaneously instituted related proceeding, In the Matter of John Paul Harnish, d/b/a KM Advisory Services, Admin. Proc. No. 3-20882 (June 6, 2022) to form the KM Advisory Fair Fund. 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, she shall not argue that she is entitled to, nor shall she 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 she 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.

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 Respondent Meredith, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Meredith 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 Respondent Meredith 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