

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95828 / September 19, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 6136 / September 19, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21107

In the Matter of

WADDELL & REED, LLC,

Respondent.

**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**

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 Waddell & Reed, LLC (“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 finds¹ that

Summary

1. These proceedings arise out of breaches of fiduciary duty and compliance failures by Waddell & Reed, Inc. ("Waddell"), a former registered investment adviser and broker-dealer. Specifically, Waddell failed to take reasonable steps with respect to certain clients in its wrap fee investment advisory program known as MAPLatitude after their accounts were flagged in Waddell's systems for potential "reverse churning." Reverse churning generally refers to the practice where a client is charged a fee that covers all advisory services and trading costs even though the client trades infrequently. A wrap fee account may not be in the best interest of a client with minimal or no trading activity as compared to a non-wrap fee or brokerage account, where the client would otherwise pay trading costs (commissions) as incurred but lower overall fees than in a wrap account.

2. Waddell's compliance policies and procedures required Waddell to conduct reviews at specified intervals to monitor whether the MAPLatitude program remained suitable for advisory clients or whether their accounts should be converted to brokerage accounts. Specifically, Waddell's policy stated that MAPLatitude "accounts with less than four (4) trades over the most recent eight (8) quarters ... will be terminated" and converted to a brokerage account.

3. Waddell, however, did not fulfill its fiduciary duty as an investment adviser because it failed to take reasonable steps after the MAPLatitude program appeared no longer to be in certain clients' best interests. In particular, from at least January 1, 2015 to July 31, 2021 (the "Relevant Period"), Waddell's monitoring flagged 737 MAPLatitude accounts that, pursuant to its compliance policies, should have been converted to brokerage accounts. Yet, Waddell did not conduct adequate follow-up, including conversion of those MAPLatitude accounts, which led those accounts to pay Waddell \$484,645 in wrap fees during the Relevant Period. Furthermore, Waddell 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 the MAPLatitude program.

Respondent

4. Waddell & Reed, Inc. ("Waddell"), now known as Waddell & Reed, LLC, was a dually-registered investment adviser and broker-dealer and wholly-owned subsidiary of Waddell & Reed Financial, Inc. On April 30, 2021, Waddell & Reed Financial, Inc. was acquired by Macquarie Asset Management ("Macquarie"). Immediately upon completion of the acquisition, Macquarie sold Waddell to LPL Financial Holdings, Inc. ("LPL"). In July 2021, LPL discontinued Waddell's MAPLatitude program. Waddell remains a subsidiary of LPL, but Waddell withdrew its

¹ 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.

registration with the Commission as an investment adviser in October 2021, and its registration as a broker-dealer in December 2021.

Facts

5. At all relevant times, Waddell was an investment adviser and broker-dealer serving advisory clients and brokerage customers, respectively, nationwide. Waddell provided wealth management services and full-service brokerage services, through a network of financial advisors, primarily to retail clients and customers. Through its financial advisors, Waddell offered clients a variety of fee-based advisory programs. These programs utilized a variety of underlying investment options, including mutual funds, individual stocks and bonds, and exchange traded funds.

6. Waddell offered a wrap fee investment advisory program known as MAPLatitude. Waddell's Form ADV brochures (the "brochures") described MAPLatitude as "designed to provide you [the client] with a full array of advice, guidance and flexibility in one bundle with one annual asset-based fee." The brochures stated that the "ongoing advice provided by your advisor is one of the key components of" MAPLatitude. The MAPLatitude wrap fees were paid quarterly, based upon the value of the assets in the client's account.

7. Waddell's brochures in the Relevant Period also discussed the differences between an advisory relationship and a brokerage relationship, and the factors to consider when choosing between them. These brochures explained that an advisory relationship is a "fiduciary" relationship requiring Waddell to "act solely in the best interest of its clients" and noted that one of the factors to consider when choosing an advisory relationship is anticipated "frequent" trading. On the other hand, these brochures noted that infrequent trading is a factor to consider when choosing a brokerage relationship.

8. Waddell's "Compliance Policies for Financial Advisors" (the "Compliance Policy") addressed how the fee structure of an advisory account differs from that of a brokerage account, and explained that financial advisors should consider this difference when determining which type of account is most suitable for a given client: "Generally, it would not be in the client's best interest ... to place the client in an account with a fee structure that reasonably can be expected to result in a greater cost than an alternative account offered by the firm that generally provides the same services and benefits to the customer." For the MAPLatitude program, specifically, the Compliance Policy stated that MAPLatitude accounts must maintain "an appropriate level of ... activity" and that an account with less than four trades over the most recent eight quarters ("Inactive Accounts") "will be terminated and the account will be converted to a traditional brokerage ... account."

9. Further, Waddell had policies and procedures whereby its compliance and supervisory personnel, on a quarterly basis, reviewed MAPLatitude accounts, flagged Inactive Accounts, and created what Waddell called "reverse churning" reports. The stated purpose of the review was for various Waddell supervisory and compliance personnel to monitor whether the MAPLatitude program remained in the clients' best interests.

10. Application of Waddell's Compliance Policy for its MAPLatitude program lacked reasonable coordination, oversight, and a method of confirming that Inactive Accounts had been addressed appropriately. As a result of these deficiencies in the design of Waddell's compliance program, Waddell failed to implement its Compliance Policy over a six-year period when it repeatedly failed to follow up, including by failing to move clients from MAPLatitude accounts to brokerage accounts after the MAPLatitude account no longer appeared to be in a client's best interest.

11. For example, after flagging Inactive Accounts and generating "reverse churning" reports, Waddell in some instances did not follow its policy of contacting the financial advisors associated with those accounts to determine whether the clients desired to increase their trading activity and meet Waddell's criteria to remain in the MAPLatitude program. Further, Waddell at times did not follow-up on Inactive Accounts identified as unresolved, which were accounts that continued to be out of compliance with the Compliance Policy even after Waddell had reached out to the clients' financial advisors. Although some Inactive Accounts were converted to brokerage accounts, at other times, Waddell personnel, even after determining to convert a MAPLatitude account, did not instruct Waddell's operations personnel to convert the account to a brokerage account. In other instances, where Waddell personnel instructed operations staff to convert a MAPLatitude account to a brokerage account, the operations staff did not take this action.

12. Waddell's failure to implement its Compliance Policy resulted in Waddell clients with Inactive Accounts paying the firm \$484,645 in wrap fees during the Relevant Period.

Duty of Care Failures

13. An investment adviser's fiduciary duty 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 must generally provide advice and monitoring over the entire course of the relationship.

14. Further, an investment adviser's fiduciary duty applies to all investment advice the adviser provides to clients, including advice about account type. Advice about account type includes advice about whether to open or invest through a certain type of account, *e.g.*, a commission-based brokerage account or a fee-based advisory account. As a general matter, an investment adviser's duty to monitor extends to all personalized advice it provides to the client, including, for example, in an ongoing relationship, an evaluation of whether a client's account or program type (for example, a wrap account) continues to be in the client's best interest.

15. During the Relevant Period, Waddell did not fulfill its duty of care obligations when it failed to take reasonable steps after the MAPLatitude program appeared no longer to be in its clients' best interests.

Compliance Deficiencies

16. During the Relevant Period, Waddell 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 Inactive Accounts in its MAPLatitude program.

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 adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder. A violation of Section 206(4) and the rules thereunder does not require scienter. *Steadman*, 967 F.2d at 647.

Disgorgement

19. The disgorgement and prejudgment interest ordered in Section IV are consistent with equitable principles and do not exceed Respondent’s net profits from its violations, and will be distributed to harmed investors (*i.e.*, Waddell clients and former clients who paid advisory fees during the quarters in the Relevant Period that their MAPLatitude accounts were out of compliance with Waddell’s Compliance Policy) (hereinafter “Affected Clients”) to the extent feasible. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to Affected Clients, and any amounts returned to the Commission in the future that are infeasible to return to Affected Clients, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

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[ed]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

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) 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 pay disgorgement and prejudgment interest totaling \$575,589 to the Affected Clients as follows:

(i) Respondent shall pay disgorgement of \$484,645 and prejudgment interest of \$90,944, consistent with the provisions of this Subsection C.

(ii) Within 10 days of the issuance of this Order, Respondent shall deposit \$575,589 (the "Distribution Fund") into a segregated account for the benefit of Affected Clients 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 designated account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600].

(iii) Respondent shall pay to Affected Clients, from the Distribution Fund, an amount representing the advisory fees such clients paid to Waddell during the quarters in the Relevant Period that Affected Clients' accounts were out of compliance with Waddell's Compliance Policy, plus reasonable interest on such fees. No portion of the Distribution Fund shall be paid to any Affected Client in which Respondent, or any of its officers or directors, has a financial interest. At the time of payment, Waddell shall notify all Affected Clients of the settlement terms of this Order by sending a copy of this Order to all Affected Clients 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.

(iv) Respondent shall, within 90 days from the date of this Order, submit a proposed disbursement calculation (the "Calculation") to the Commission staff for review and approval. 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 ten (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. Respondent shall, within thirty (30) 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, (i) the name of each Affected Client; (ii) the exact amount of the payment to be made from the Distribution Fund to each Affected Client; and (iii) the amount of reasonable interest to be paid.

(v) Respondent shall complete the disbursement of all amounts payable to Affected Clients within 90 days of the date that the Commission staff accepts the Payment File, unless such time period is extended as provided in Paragraph viii of this Subsection C.

(vi) If Respondent is unable to distribute any portion of the Distribution Fund for any reason, including an inability to locate an Affected Client or any 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 when the distribution of funds is complete and before the final accounting provided for in Paragraph vii of this Subsection C is submitted to the Commission staff. 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 Respondent 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 Ian Karpel, Division of Enforcement, Securities and Exchange Commission, 1961 Stout St., Suite 1700, Denver, CO 80294.

(vii) Within 150 days after Respondent completes the distribution of all amounts payable to Affected Clients, Respondent shall return all undisbursed funds to the Commission. Respondent shall 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: (i) the amount paid to each Affected Client, with

the reasonable interest amount, reported separately; (ii) the date of each payment; (iii) the check number or other identifier of the money paid to each Affected Client; (iv) the amount of any returned payment and the date received; (v) a description of the efforts to locate a prospective Affected Client whose payment was returned or to whom payment was not made for any reason; (vi) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (vii) an affirmation that Respondent has made payments from the Distribution Fund to Affected Clients in accordance with the Payment File approved by the Commission staff. Respondent shall submit an accounting and certification, together with proof and supporting documentation of such payment (whether in the form of electronic payments or cancelled checks) in a form acceptable to the Commission staff, under a cover letter that identifies Respondent and the file number of these proceedings to Ian Karpel, Division of Enforcement, Securities and Exchange Commission, 1961 Stout St., Suite 1700, Denver, CO 80294. Respondent 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.

(viii) 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 that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

(ix) 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.

(x) A Distribution Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. Sections 1.468B.1-1.468B.5. Respondent shall be responsible for any and all tax compliance responsibilities associated with the distribution of the Distribution Fund, including but not limited to tax obligations resulting from the Distribution Fund’s status as a QSF and the Foreign Account Tax Compliance Act, 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 Distribution Fund.

D. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$200,000 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:

(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 Respondent as a 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 Ian Karpel, Division of Enforcement, Securities and Exchange Commission, 1961 Stout St., Suite 1700, Denver, CO 80294.

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.

By the Commission.

Vanessa A. Countryman
Secretary