

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6046 / June 7, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20890

In the Matter of

**TRUST ADVISORY GROUP,
LTD.**

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 Trust Advisory Group, Ltd. (“Respondent” or “Trust Advisory Group”).

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 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 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 from Trust Advisory Group's breach of fiduciary duty to its advisory clients in connection with its affiliated broker-dealer's receipt of revenue resulting from advisory clients' assets in cash sweep products. From December 2015 to March 2022 (the "Relevant Period"), Trust Advisory Group's affiliated broker-dealer, AGES Financial Services, Ltd. ("AGES Financial Services") received revenue sharing payments from its clearing broker (the "Clearing Broker") for Trust Advisory Group's clients' assets in cash sweep products, including money market mutual funds and FDIC-insured bank deposit accounts. Trust Advisory Group failed to provide full and fair disclosure of this revenue sharing and the resulting conflicts of interest.

2. Additionally, Trust Advisory Group failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder related to its disclosure of cash sweep revenue sharing and the associated conflicts of interest.

3. As a result of the conduct described above, Trust Advisory Group willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondent

4. Trust Advisory Group is incorporated in Massachusetts and has its principal place of business in Woburn, Massachusetts. Trust Advisory Group has been registered with the Commission as an investment adviser since July 25, 1994. In its Form ADV dated March 31, 2021, Trust Advisory Group reported regulatory assets under management of about \$513 million. All Trust Advisory Group investment adviser representatives who are also registered representatives are registered representatives of AGES Financial Services.

Other Relevant Entity

5. AGES Financial Services (formerly known as Advisory Group Equity Services, Ltd.) is incorporated in Massachusetts and has its principal place of business in Woburn, Massachusetts. AGES Financial Services has been registered with the Commission as a broker-dealer since July 18, 1984. Trust Advisory Group and AGES Financial Services are majority owned by the same parent company, TAG Group, Inc.

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.

Background

6. Trust Advisory Group provides investment advisory services to individuals, pension and profit sharing plans, and government entities. Trust Advisory Group offers investment advisory services to clients on both a non-discretionary and discretionary basis.

7. According to Trust Advisory Group's Forms ADV during the Relevant Period, advisory clients paid Trust Advisory Group a fee for asset management services of up to two percent of the clients' assets under management, including assets in the cash sweep program.

8. As an investment adviser, Trust Advisory Group was obligated to disclose all material facts to its advisory clients, including any conflicts of interest between itself and its clients. Trust Advisory Group was also obligated to disclose all material facts relating to how those conflicts could affect the advice Trust Advisory Group provided to its clients. To meet this fiduciary obligation, Trust Advisory Group was required to provide its advisory clients with full and fair disclosure that was sufficiently specific so that clients could understand the conflicts of interest concerning Trust Advisory Group's investment advice and have an informed basis on which they could consent to or reject the conflicts.

Cash Sweep Revenue Sharing Arrangement

9. During the Relevant Period, AGES Financial Services served as introducing broker-dealer for some of Trust Advisory Group's client accounts. Those clients for whom AGES Financial Services served as introducing broker-dealer opened brokerage accounts at AGES Financial Services that held their investments and any cash balances that Trust Advisory Group managed. AGES Financial Services cleared transactions in client accounts exclusively through the Clearing Broker.

10. From December 2015 to December 28, 2017, the Clearing Broker offered a cash sweep program through which uninvested cash (e.g., incoming cash deposits, dividends, or investment returns) of Trust Advisory Group's clients who were AGES Financial Services customers would be automatically transferred to: (i) one or more FDIC-insured bank deposit accounts or (ii) one of certain money market mutual funds. Beginning on or about December 29, 2017, the Clearing Broker began offering only FDIC-insured bank deposit accounts as part of the cash sweep program.

11. During the Relevant Period, the Clearing Broker paid revenue sharing to AGES Financial Services based on the amount of assets held in the cash sweep vehicles by AGES Financial Services' customers (including those who were also advisory clients of Trust Advisory Group). These cash sweep vehicles were either a money market mutual fund or FDIC-insured deposit account product. The Clearing Broker would receive a payment based on assets held in each cash sweep vehicle. Pursuant to the arrangement between AGES Financial Services and the Clearing Broker, the Clearing Broker retained the first 20 basis points (or .2%) of this payment. To the extent the cash sweep product vendor paid revenue exceeding 20 basis points, the

Clearing Broker shared the excess revenue with AGES Financial Services, subject to caps based on the aggregate amount of assets in the cash sweep product.

12. During the Relevant Period, Trust Advisory Group did not provide full and fair disclosure regarding the revenue AGES Financial Services received from the Clearing Broker based on client assets in cash sweep programs or the resulting conflicts of interest that arrangement created. For example, the arrangement created an incentive for Trust Advisory Group to leave client cash in the cash sweep program over other investments.

Compliance Deficiencies

13. During the Relevant Period, Trust Advisory Group 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 disclosure of conflicts of interest presented by AGES Financial Services' receipt of revenue sharing based on Trust Advisory Group's clients' assets in the cash sweep program.

Violations

14. As a result of the conduct described above, Trust Advisory Group willfully² violated Section 206(2) of the Advisers Act, which prohibits an investment adviser, directly or indirectly, from engaging "in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client." Scierter 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)).

15. As a result of the conduct described above, Trust Advisory Group 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.

Disgorgement and Civil Penalties

16. The disgorgement and prejudgment interest ordered in Section IV. is consistent with equitable principles and does not exceed Respondent's net profits from its violations, and

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).

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, 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 Securities Exchange Act of 1934 (“Exchange Act”).

Undertakings

17. Trust Advisory Group has undertaken to:
 - a. Within 30 days of the entry of this Order, review and correct as necessary all relevant disclosure documents concerning cash sweep revenue sharing.
 - b. Within 30 days of the entry of this Order, evaluate, update (if necessary), and review for the effectiveness of their implementation, Trust Advisory Group’s policies and procedures so that they are reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with disclosures regarding cash sweep revenue sharing.
 - c. Within 30 days of the entry of this Order, notify affected investors (i.e., those former and current clients who held assets in the cash sweep program during the Relevant Period that may have been impacted by the practices discussed above (hereinafter, “affected investors”)) of the settlement terms of this Order by sending a copy of this Order to each affected investor 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.
 - d. Within 45 days of the entry of this Order, certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Robert Baker, Assistant Director, Asset Management Unit, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, MA 02110, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division.
 - e. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates 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 the last day.

IV.

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

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

A. Trust Advisory Group 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. Trust Advisory Group is censured.

C. Trust Advisory Group shall pay disgorgement, prejudgment interest, and a civil monetary penalty totaling \$214,460.07, as follows:

(i) Trust Advisory Group shall pay disgorgement of \$148,255.15 and prejudgment interest of \$16,204.92 consistent with the provisions of this Subsection C.

(ii) Trust Advisory Group shall pay a civil monetary penalty in the amount of \$50,000 consistent with the provisions of this Subsection C.

(iii) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalty, disgorgement, and prejudgment interest referenced above for distribution to affected investors. 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, Trust Advisory Group 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 Trust Advisory Group's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Trust Advisory Group agrees that it shall, within thirty (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 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 Trust Advisory Group 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.

(iv) Respondent shall pay the disgorgement, prejudgment interest, and civil penalty ordered in this subsection in the following installments: within 30 days of entry of this Order, Respondent shall pay \$71,486.69; within 90 days of the entry of

this order, Respondent shall pay \$71,486.69; and within 180 days of the entry of this order, Respondent shall pay \$71,486.69, plus all accrued interest. Trust Advisory Group shall deposit the payments of disgorgement, prejudgment interest, and the civil money penalty (the “Fair Fund”), into an escrow account at a financial institution not unacceptable to the Commission staff and Trust Advisory Group shall provide evidence of such deposit in a form acceptable to the Commission staff. The account holding the assets of the Fair Fund shall bear the name and the taxpayer identification number of the Fair Fund. Payments shall be applied first to post order interest, which accrues pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600] 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.

(v) Trust Advisory Group shall be responsible for administering the Fair Fund and may hire a professional to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Trust Advisory Group and shall not be paid out of the Fair Fund.

(vi) Trust Advisory Group shall distribute from the Fair Fund to each affected investor an amount representing the financial harm during the relevant period by the practices discussed above, and, if funds are available, reasonable interest on such amounts, 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. The Calculation shall be subject to a de minimis threshold. No portion of the Fair Fund shall be paid to any affected investor account in which TAG Group, Inc. or Trust Advisory Group, or any of their past or present officers or directors have a financial interest.

(vii) Trust Advisory Group shall, within ninety (90) days of the entry of this Order, submit a Calculation to the Commission staff for review and approval. At or around the time of submission of the Calculation to the staff, Trust Advisory Group shall make itself available, and shall require any third-parties or professionals retained by Trust Advisory Group 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. Trust Advisory Group shall also provide to 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 Trust Advisory Group’s proposed

Calculation or any of its information or supporting documentation, Trust Advisory Group 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 Trust Advisory Group is notified of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

(viii) Trust Advisory Group 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 investor. The Payment File should identify, at a minimum: (1) the name of each affected investor, (2) the exact amount of the payment to be made from the Fair Fund to each affected investor, (3) the application of a de minimis threshold, and (4) the amount of reasonable interest paid.

(ix) Trust Advisory Group shall complete the disbursement of all amounts payable to affected investors within 90 days of the date that the Commission staff accepts the Payment File, unless such time period is extended as provided in Paragraph (xiii) of this Subsection C.

(x) If Trust Advisory Group is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor or any factors beyond Trust Advisory Group's control, Trust Advisory Group 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 the funds is complete and before the final accounting provided for in Paragraph (xii) below is submitted to the Commission staff. Payment must be made in one of the following ways:

- (a) Trust Advisory Group may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (b) Trust Advisory Group 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) Trust Advisory Group 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 Trust Advisory Group, Ltd. 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 Robert Baker, Assistant Director, Asset Management Unit, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, MA 02110, or such other address as the Commission staff may provide.

(xi) A Fair 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. Trust Advisory Group shall be responsible for any and all tax compliance responsibilities associated with the Fair Fund, including but not limited to tax obligations resulting from the Fair Fund’s status as a QSF and the Foreign Account Tax Compliance Act (“FATCA”), and may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services shall be borne by Trust Advisory Group and shall not be paid out of the Fair Fund.

(xii) Within 150 days after Trust Advisory Group completes the disbursement of all amounts payable to the affected investors, Trust Advisory Group shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. Trust Advisory Group shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval. The final accounting shall be in a format to be provided by the Commission staff. The final accounting and certification shall include: (1) the amount paid to each affected investor, with reasonable interest and post-order interest, if applicable, reported separately; (2) the date of each payment; (3) the check number or other identifier of money transferred to each affected investor; (4) the amount of any returned payment and the date received; (5) a description of any effort to locate an affected investor 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 Trust Advisory Group has made payments from the Fair Fund to affected investors in accordance with the Payment File approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies Trust Advisory Group, Ltd. as the Respondent in these proceedings and the file number of these proceedings to Robert Baker, Assistant Director, Asset Management Unit, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, MA 02110, or such other address as the Commission staff may provide. Trust Advisory Group shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon request, and Trust Advisory Group shall cooperate with any additional

requests by the Commission staff in connection with the accounting and certification.

(xiii) 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 Fair 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 shall comply with the undertakings enumerated in Section III., paragraph 17(a)-(d) above.

By the Commission.

Vanessa A. Countryman
Secretary