

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98478 / September 22, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21699

In the Matter of

Carl M. Hennig, Inc.,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
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 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Carl M. Hennig, Inc. (“Hennig” 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 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 Sections 15(b) and 21C of the Securities Exchange Act of 1934, 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. This proceeding concerns Hennig's failure to comply with Regulation Best Interest's ("Regulation BI") Compliance Obligation, which requires broker-dealer firms to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Regulation BI, and Regulation BI's Conflict of Interest Obligation, which requires broker-dealer firms to establish, maintain, and enforce reasonably designed written policies and procedures identifying and addressing conflicts of interest. Between June 30, 2020 and January 2023, Hennig's written policies and procedures were not reasonably designed to achieve compliance with Regulation BI. Among other things, Hennig's written policies and procedures did not explain what factors or criteria should be considered and weighed when making recommendations or determining whether a particular recommendation is in the customer's best interest; provide sufficient information regarding the information provided to customers, including the fees associated with Hennig's retail brokerage services; or address how and when Hennig would update and provide written disclosures to its customers. In addition, Hennig's written policies and procedures did not explain how to identify conflicts of interest or how to disclose, mitigate, or eliminate them. By failing to comply with Regulation BI's Compliance Obligation and Conflict of Interest Obligation, Hennig willfully violated the General Obligation of Regulation BI, found in Rule 15l-1(a)(1) of the Exchange Act ("General Obligation").

Respondent

2. **Carl M. Hennig, Inc.** is a Wisconsin-based corporation established in 1933 with its principal place of business in Oshkosh, Wisconsin. Hennig has been registered with the Commission as a broker-dealer since March 1969 and has been registered with the state of Wisconsin as an investment adviser since March 2013. Hennig has offices in Oshkosh, Wisconsin and Berlin, Wisconsin.

Background

3. The General Obligation of Regulation BI, with a compliance date of June 30, 2020, provides in relevant part that "[a] broker, dealer, or a natural person who is an associated person of a broker or dealer, when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, shall act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interest of the broker, dealer, or natural person who is an associated person of a broker or dealer making the recommendation ahead of the interest of the retail customer." *See*

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.

Exchange Act Release No. 86031, “Regulation Best Interest: The Broker-Dealer Standard of Conduct,” at 371 (June 5, 2019) (hereinafter “Adopting Release”); Exchange Act Rule 15l-1(a)(1).

4. Broker-dealers like Hennig can satisfy the General Obligation only if they comply with the following component obligations: (1) providing certain prescribed disclosures, before or at the time of the recommendation, about the recommendation and the relationship between the retail customer and the broker-dealer (“Disclosure Obligation”); (2) exercising reasonable diligence, care, and skill in making the recommendation (“Care Obligation”); (3) establishing, maintaining, and enforcing policies and procedures reasonably designed to identify and address conflicts of interest (“Conflict of Interest Obligation”); and (4) establishing, maintaining, and enforcing policies and procedures reasonably designed to achieve compliance with Regulation BI (“Compliance Obligation”). Adopting Release at 13. Because all of the component obligations are mandatory, failure to comply with any of them violates the General Obligation. *See id.* at 72.

5. The Compliance Obligation requires broker-dealer firms to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Regulation BI. Exchange Act Rule 15l-1(a)(2)(iv). In other words, firms must “establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Regulation Best Interest as a whole . . . [A firm’s] policies and procedures must address not only conflicts of interest but also compliance with its Disclosure and Care Obligations under Regulation Best Interest.” *See* Adopting Release at 16.

6. The Conflict of Interest Obligation requires broker-dealers to establish, maintain, and enforce reasonably designed written policies and procedures identifying and addressing conflicts of interest associated with its recommendations to retail customers. Exchange Act Rule 15l-1(a)(2)(iii); *see also* Adopting Release at 15. These policies and procedures must be reasonably designed to identify all such conflicts and at a minimum disclose or eliminate them. *See* Adopting Release at 15. Regulation BI defines a conflict of interest as an interest that might incline a broker-dealer or registered representative, consciously or unconsciously, to make a recommendation to a retail customer that is not disinterested. Exchange Act Rule 15l-1(b)(3).

7. The Disclosure Obligation requires, before or at the time of the recommendation, a broker-dealer to disclose, in writing, all material facts about the scope and terms of its relationship with the customer, including that the firm or representative is acting in a broker-dealer capacity; the material fees and costs the customer will incur; and the type and scope of the services to be provided, including any material limitations on the recommendations that could be made to the retail customer. Exchange Act Rule 15l-1(a)(2)(i); *see also* Adopting Release at 14. Additionally, the Disclosure Obligation requires a broker-dealer to disclose in writing, before or at the time of the recommendation, all material facts relating to conflicts of interest that are associated with the recommendation. The Disclosure Obligation does not require individualized fee disclosure for each retail customer, but instead contemplates “more standardized numerical and narrative disclosures, such as standardized or hypothetical amounts, dollar or percentage ranges, and explanatory text where appropriate.” *See* Adopting Release at 168. The disclosure should also accurately convey why a fee is being imposed and when a fee is to be charged. *Id.* Broker-dealers

often will need to “build upon the material fees and costs identified in the Relationship Summary,² providing additional detail as appropriate.” *Id.* at 166. In most instances, broker-dealers will need to provide additional information beyond that contained in Form CRS in order to satisfy the Disclosure Obligation. *See id.* at 225.

8. The Care Obligation requires a broker-dealer, when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer, to, among other things, exercise reasonable diligence, care, and skill to (1) understand the potential risks, rewards, and costs associated with the recommendation, and (2) consider those risks, rewards, and costs in light of the customer’s investment profile and have a reasonable basis to believe that the recommendation is in the customer’s best interest and does not place the broker-dealer’s interest ahead of the retail customer’s interest. Exchange Act Rule 15l-1(a)(2)(ii); *see also* Adopting Release at 14 – 15. “[C]onsistent with the Compliance Obligation, broker-dealers and their associated persons must have a reasonable process for developing and making recommendations to retail customers in compliance with the Care Obligation, including the consideration of reasonably available alternatives, which will depend on the facts and circumstances.” *See* Adopting Release at 290.

Facts

9. Hennig adopted new written policies and procedures to comply with Regulation BI on June 29, 2020, the last day before Regulation BI’s compliance date. These written policies and procedures contained some general language from the text of Regulation BI, but were not tailored to Hennig’s business, did not provide guidance or procedures for how Hennig’s registered representatives and supervisors could achieve compliance with Regulation BI and its component obligations, and did not include reasonably designed mechanisms for Hennig to enforce its Regulation BI policies and procedures.

10. From their adoption in June 2020 through January 2023, Hennig’s written policies and procedures related to the Conflict of Interest Obligation stated that Hennig “strive[s] to create a sales environment that is free of quotes, sales incentives, proprietary products or products with third-party arrangements, bonuses, and noncash compensation on the sale of specific types of securities to ensure that the client’s best interest is met.” These written policies and procedures failed to adequately address Hennig’s Conflict of Interest Obligation because, among other things, they did not provide any guidance or procedures for how the firm was to achieve those goals,

² On June 5, 2019, the Commission adopted the Form CRS Relationship Summary (“Form CRS”) to enhance the quality and transparency of retail investors’ relationships with registered broker-dealers and investment advisers. *See* Form CRS Relationship Summary; Amendments to Form ADV, Release Nos. 34-86032 & IA-5247 (June 5, 2019) (effective September 10, 2019). Exchange Act Rule 17a-14(b)(1) requires broker-dealers offering services to retail investors to prepare their Forms CRS by following the instructions in the form. The instructions to Form CRS require disclosures on certain topics under standardized headings in a prescribed order, such as information regarding firms’ services, fees, conflicts of interest, disciplinary history, and other important information. *See* Instructions to Form CRS (Sept. 2019).

including guidance or procedures for how Hennig’s registered representatives and supervisors could identify, review, or address conflicts of interest through elimination, mitigation, or disclosure, as appropriate.

11. From their adoption in June 2020 through January 2023, Hennig’s written policies and procedures related to its Disclosure Obligation stated that Hennig’s Form CRS “will address all available services Hennig offers through its brokerage accounts and advisory platforms and the fees associated with both.” In its Form CRS, Hennig further disclosed that the “primary fees” paid by the customers for brokerage services are “transaction-based fees . . . typically called commissions, sales charges, loads, selling concessions, or trails.” However, Hennig’s written policies and procedures were not reasonably designed to provide additional information beyond that discussed in its Form CRS to its customers. Specifically, Hennig’s written policies and procedures failed to adequately address its Disclosure Obligation because, among other things, they did not provide sufficient guidance or procedures for disclosing material fees and costs beyond what was discussed in its Form CRS to retail customers, such as “standardized or hypothetical amounts,” “dollar or percentage ranges,” or “explanatory text,” with regard to any of the fees associated with their product offerings. Hennig’s written policies and procedures likewise contained no guidance on or procedures for disclosing all material facts relating to conflicts of interest associated with each recommendation, as required under the Disclosure Obligation.

12. From their adoption in June 2020 through January 2023, Hennig’s written policies and procedures related to its Care Obligation stated that all of its registered representatives “will make recommendations based on the investment profile associated with the account,” and “limit such recommendations to the [customer’s] stated investment objectives, discuss such recommendations with the [customer] and subsequently proceed based on the final decision made by the [customer].” These written policies and procedures failed to adequately address Hennig’s Care Obligation because, among other things, they did not require Hennig’s registered representatives and supervisors to evaluate the risks, rewards, and costs associated with the recommendation, or provide any guidance or procedures for how to achieve compliance with the Care Obligation, including any guidance or procedures for how Hennig’s registered representatives and supervisors could evaluate reasonably available alternatives when making recommendations to customers.

13. In January 2021, after an examination by the Financial Industry Regulatory Authority (“FINRA”), FINRA requested that Hennig take action to update and correct its written policies and procedures related to Regulation BI. When the Commission’s Division of Examinations examined Hennig in June 2021, Hennig had not yet taken action sufficient to bring its written policies and procedures into compliance with Regulation BI. As a result, in May 2022, the Commission’s Division of Examinations issued a deficiency letter to Hennig noting that Hennig’s written policies and procedures still failed to comply with Regulation BI. In January 2023, Hennig adopted new written policies and procedures related to Regulation BI, including written policies and procedures related to its Conflict of Interest Obligation, Disclosure Obligation, and Care Obligation.

Violations

14. As a result of the conduct described above, Hennig failed to satisfy the General Obligation under Regulation BI and willfully³ violated Rule 15l-1(a)(1) of the Exchange Act by failing to satisfy the Compliance Obligation and the Conflict of Interest Obligation.

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 Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

- A. Respondent cease and desist from committing or causing any violations and any future violations of Exchange Act Rule 15l-1(a)(1).
- B. Respondent is censured.
- C. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$50,000.00 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:

³ "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).

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 Hennig 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 Anne C. McKinley, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 1450, Chicago, IL 60604.

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