

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6328 / June 16, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21489

In the Matter of

**PACIFIC INVESTMENT
MANAGEMENT COMPANY
LLC**

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 Pacific Investment Management Company LLC (“PIMCO” 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 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. From April 2011 to November 2017, PIMCO, a registered investment adviser, failed to accurately waive certain advisory fees consistent with its agreement with a mutual fund it managed, the All Asset All Authority Fund (the "Authority Fund"). PIMCO serves as the investment adviser for the Authority Fund, which is a "fund of funds" that primarily invests in other PIMCO-managed funds. As such, PIMCO receives advisory fees from both the Authority Fund and the other PIMCO-managed funds in which the Authority Fund invests. Ostensibly to limit the advisory and administrative expenses associated with investing in the other PIMCO-managed funds, PIMCO contractually agreed to a "fee waiver." Here, the agreement provides that PIMCO reduce its advisory fees on the Authority Fund to the extent PIMCO receives a certain amount of advisory, supervisory, and administrative fees from other PIMCO funds in which the Authority Fund invests. While PIMCO did waive a portion of the agreed upon fee waiver amount, over a period of more than 6 years it failed to waive approximately \$27 million of the Authority Fund's advisory fees due to an error in a formula PIMCO created and provided to its sub-administrator to calculate the fee waiver amount.

2. PIMCO's sub-administrator, which performed the relevant calculations using a formula and instructions PIMCO created, discovered and notified PIMCO of the error in December 2017. PIMCO then hired third parties to further evaluate the issue and to remediate it. In July 2018, PIMCO implemented a remediation plan to reimburse the Authority Fund's shareholders over \$30 million in unwaived fees, lost performance, and interest, and took other steps to enhance its policies and procedures.

3. Up until at least 2018, PIMCO did not have reasonably designed policies and procedures in place to prevent violations of the Advisers Act and the rules thereunder relating to its oversight of the advisory fee calculations and related fee waivers in violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondent

4. PIMCO is a Delaware limited liability company with its principal place of business in Newport Beach, California. PIMCO has been registered as an investment adviser with the Commission since 1994. As of March 31, 2023, PIMCO had approximately \$2.24 trillion in regulatory assets under management. PIMCO is a majority-owned subsidiary of Allianz Asset Management of America LLC ("Allianz Asset Management"). Through various holding company structures, Allianz Asset Management is indirectly wholly owned by Allianz SE.

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.

Other Relevant Entity

5. PIMCO All Asset All Authority Fund, formed in October 2003, is an open-end mutual fund that primarily invests in other PIMCO-managed funds. As of January 31, 2023, the Authority Fund had approximately \$2.2 billion in total net assets, and had approximately between \$7.8 billion and \$36 billion in total net assets during the relevant period.

Background

6. In general, PIMCO charges the mutual funds it manages a management fee comprised of an advisory fee and a supervisory and administrative fee. Because the Authority Fund invests in other PIMCO funds, PIMCO receives advisory fees for the assets invested in the Authority Fund at both the Authority Fund level and at the underlying fund level. PIMCO agreed to waive a portion of the advisory fee it charged the Authority Fund if certain thresholds were met. As explained in the Authority Fund's 2003 prospectus describing PIMCO's contract with the Authority Fund in effect during the relevant period, "PIMCO has contractually agreed . . . to reduce its advisory fee to the extent that the Underlying PIMCO Fund Expenses attributable to advisory and supervisory and administrative fees exceed 0.69%" of the total [Authority Fund] assets invested in those Underlying PIMCO Funds" (the "Fee Waiver").

7. In 2010, PIMCO contractually delegated the monthly calculation of its advisory fees and the Fee Waiver to its sub-administrator for various funds, including the Authority Fund, pursuant to an agreement (the "Agreement"). The Agreement stated that the sub-administrator would "[p]repare for the review and approval by [PIMCO's] designated officer(s) of the Funds the affiliated advisor fee waiver calculation for the applicable funds . . ." In late 2010 through April 2011, PIMCO employees instructed the sub-administrator on the calculations and provided a spreadsheet that PIMCO had previously used to conduct the calculations. PIMCO also exchanged numerous communications with the sub-administrator concerning the methodology used to calculate the advisory fees and Fee Waivers.

8. The problem with the Fee Waiver calculation arose due to the fact that both PIMCO's spreadsheet and instructions to the sub-administrator failed to address the Authority Fund's use of leverage and its potential impact on the fee waiver calculation. As a result, from April 2011 to November 2017, the Fee Waivers the sub-administrator calculated for the Authority Fund were lower than they should have been. While PIMCO's error in the fee waiver calculation spreadsheet was present since the Authority Fund's inception, the miscalculation did not actually result in underwaived fees prior to that period.

9. PIMCO reviewed and approved each of the Fee Waiver amounts that had been incorrectly calculated by the sub-administrator using PIMCO's spreadsheet and instructions. In particular, after the sub-administrator performed its calculation of the Fee Waivers each month, it provided a detailed spreadsheet to PIMCO's designated officer who then reviewed the Fee Waiver amounts, and signed off noting PIMCO's approval. Upon receiving approval from the PIMCO officer, PIMCO submitted a letter to the sub-administrator granting permission to implement the applicable Fee Waivers for the Authority Fund. This sign-off and subsequent letter indicated to the

sub-administrator that PIMCO had reviewed and approved the Fee Waiver amounts, as anticipated by the Agreement.

10. In the 79 months of miscalculations, PIMCO never identified any concerns with the sub-administrator's calculation of the Fee Waiver amounts.

11. Although the Agreement represented that PIMCO's designated officer would review the sub-administrator's calculations, PIMCO failed to adopt and implement policies and procedures with reasonably designed processes in place to do so. Specifically, even though the Authority Fund's disclosed investment strategies permitted it to use leverage and PIMCO retained authority, control, oversight, and the responsibility to review the sub-administrator's Fee Waiver calculations for the Authority Fund, there was no reasonably designed process in place to oversee the calculations.

12. In December 2017, the sub-administrator discovered the miscalculated Fee Waiver amounts in the course of reviewing and further automating its calculation process for all fund of funds fee waivers. The sub-administrator immediately contacted PIMCO concerning the errors, and PIMCO hired third parties to investigate and evaluate the issues. Upon learning of the error, PIMCO notified the Authority Fund's Board of Trustees and shareholders, including through disclosure in the Authority Fund's shareholder reports in May 2018 and on PIMCO's website in November 2019 (prior to the staff's investigation), as a notice to affected investors.

13. As part of the remediation plan that began in July 2018, PIMCO corrected the Fee Waiver calculations moving forward, enhanced its audit procedures, adopted written policies and procedures to oversee the sub-administrator's Fee Waiver calculations, and engaged a third party to review and approve PIMCO's internal controls for the Authority Fund. In November 2019 (prior to the staff's investigation), PIMCO disbursed approximately \$27 million in payments for under-waived fees to Authority Fund shareholders, over \$3.2 million in performance adjustment (i.e., the proportionate amount the Authority Fund would have earned on the \$27 million had that amount remained in its continuing investments), plus interest.

Remedial Efforts

14. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by PIMCO upon learning of the error.

Violations

15. As a result of the conduct described above, PIMCO willfully² violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules.

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

A. Respondent PIMCO cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. Respondent PIMCO is censured.

C. Respondent PIMCO shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$2,500,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

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

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).

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 PIMCO 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 Corey Schuster, Co-Chief of the Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE Washington, DC 20549.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary