

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 6431 / September 25, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21707

In the Matter of

**DWS Investment
Management Americas, Inc.**

Respondent

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 9(f) OF THE INVESTMENT
COMPANY ACT OF 1940, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against DWS Investment Management Americas, Inc. (“DIMA” 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 Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

Based on this Order and Respondent's Offer, the Commission finds that:

Summary

1. This matter concerns the failure of the mutual funds advised by DWS Investment Management Americas, Inc. ("DIMA") (collectively, the "DWS Mutual Funds") to develop and implement a reasonably designed anti-money laundering ("AML") program to comply with the Bank Secrecy Act, 31 U.S.C. § 5311 et seq. ("BSA"), and applicable regulations promulgated by the Financial Crimes Enforcement Network ("FinCEN").

2. As a result of this failure, the DWS Mutual Funds violated Rule 38a-1 under the Investment Company Act, and DIMA caused the funds' violations. Rule 38a-1 requires registered investment companies to adopt and implement written policies and procedures reasonably designed to prevent violations of the federal securities laws, which includes the BSA as it applies to funds, and any rules adopted thereunder by the U.S. Department of the Treasury, including FinCEN. In April 2002, FinCEN adopted a rule requiring mutual funds to develop and implement AML programs tailored to their own business structures, including certain minimum requirements, 31 C.F.R. § 1024.210 (formerly 31 C.F.R. § 103.130); however, from at least January 2017 until December 2021, the DWS Mutual Funds did not have an AML compliance program specifically for mutual funds. Instead, the DWS Mutual Funds adopted an AML program designed for the U.S. operations of Deutsche Bank AG, which did not address the specific AML compliance requirements for the mutual fund business.

3. The DWS Mutual Funds also failed, and DIMA caused the funds' failure, to adopt and implement policies and procedures reasonably designed to detect activities indicative of money laundering with respect to transaction monitoring and did not conduct AML training specific to the DWS Mutual Funds' business, both of which are required by the FinCEN rule.

4. DIMA caused the DWS Mutual Funds to violate Rule 38a-1 under the Investment Company Act, as DIMA was responsible for establishing AML policies and procedures for the funds.

Respondent

5. **DWS Investment Management Americas, Inc.**, a Delaware corporation headquartered in New York, New York, is an investment adviser registered with the Commission since 1940. According to its Form ADV filed on March 31, 2023, DIMA has approximately \$165 billion in total regulatory assets under management. DIMA is the investment adviser to the DWS Mutual Funds and a corporate subsidiary of DWS Group GmbH & Co. KGaA ("DWS"), an asset management holding company headquartered in Frankfurt, Germany. DWS was established in 2018 as a holding company of the former asset management division of Deutsche Bank AG. Prior to DWS's initial public offering on the Frankfurt Stock Exchange in 2018, DWS was wholly owned by Deutsche Bank AG, and it remains a majority-owned indirect subsidiary of Deutsche Bank AG.

Other Relevant Entities – the DWS Mutual Funds

6. As of year-end 2022, the DWS Mutual Funds complex consisted of approximately 66 registered open-end funds with total net assets of approximately \$72 billion, including approximately eight money market funds with total net assets of approximately \$37 billion.

Facts

A. DIMA Caused the DWS Mutual Funds’ Failure to Develop and Implement an AML Compliance Program Specifically for the Mutual Fund Business

7. Section 352 of the USA PATRIOT Act amended the BSA to require financial institutions to implement AML compliance programs. In April 2002, FinCEN adopted a rule under the BSA to require mutual funds to develop AML compliance programs (“FinCEN AML Mutual Fund Program Rule” or the “Rule”).

8. As detailed in the Rule’s adopting release, because mutual funds operate through a variety of different business models, the Rule does not mandate one generic AML program for the entire industry; rather, the Rule allows each mutual fund to develop a program based upon its own business structure. As a result, in fashioning its AML policies and procedures, each mutual fund complex should identify its vulnerabilities, understand applicable BSA requirements, identify the risk factors relating to these requirements, design the procedures and controls that will be required to reasonably assure compliance with these requirements, and periodically assess the effectiveness of the procedures and controls. An AML program designed for a different type of financial institution would generally not satisfy these requirements.

9. The FinCEN AML Mutual Fund Program Rule requires that a mutual fund’s AML program be in writing, be approved by the mutual fund’s board of directors or trustees and include certain specific minimum requirements.

10. From at least January 2017 until December 2021, the Board of the DWS Mutual Funds annually reviewed and approved the AML compliance program designed for all Deutsche Bank AG’s U.S. operations. This was an umbrella AML program for various Deutsche Bank entities; however, it did not address the specific compliance requirements for the mutual fund business.

11. DIMA caused the DWS Mutual Funds’ failure to develop and implement an AML program appropriately tailored to the risks or vulnerabilities to money laundering posed by mutual funds, as required under the FinCEN AML Mutual Fund Program Rule. This included a failure to establish and implement AML policies specific to the DWS Mutual Funds’ business.

B. DWS Mutual Funds Were Required to Establish and Implement Policies, Procedures, and Internal Controls Reasonably Designed to Detect Money Laundering Activities

12. The FinCEN AML Mutual Fund Program Rule requires mutual funds to establish and implement policies, procedures, and internal controls reasonably designed to detect activities indicative of money laundering.

13. From 2009 until April 2022, the DWS Mutual Funds relied on a vendor-provided software system (hereinafter “TMS” or “TMS system”) for transaction monitoring. The software was used internally to monitor mutual fund shareholder transactions for indications of suspicious activity, including money laundering.

14. There were certain policies and procedures in place regarding the TMS system, but, as specified below, they were not reasonably designed to detect activities indicative of money laundering.

15. The DWS Mutual Funds also had in place a separate transaction monitoring system that was maintained by the funds’ sub-transfer agent. As part of this system, certain alerts of potential suspicious activity needed to be reviewed by DIMA personnel on behalf of the DWS Mutual Funds. DIMA personnel did review these alerts; however, DIMA caused the DWS Mutual Funds’ failure to establish policies and procedures reasonably designed to ensure appropriate DIMA personnel knew about this separate transaction monitoring system and the requirement to monitor and resolve alerts elevated to them by the system.

i. DWS Mutual Funds Lacked Clear Policies Regarding the Timing to Calibrate and Tune the TMS System

16. The TMS system generated automated transaction monitoring alerts that were based on scenario-based rules. These rules were designed to detect potentially suspicious transaction activity that could require the filing of a suspicious activity report by the DWS Mutual Funds.

17. To ensure that these scenario-based rules, and their corresponding alert threshold levels, remain effective and relevant, they must be tested periodically to determine whether any adjustments are needed. This process is referred to as “calibrating” or “tuning” the TMS system. Calibrating and tuning the TMS system was critical to evaluate whether it was effective in detecting suspicious activity, including money laundering.

18. The AML policies and procedures applicable to the TMS system were not reasonably designed, because it was not clear how often the TMS system was required to be calibrated or tuned. Certain documents stated that an annual calibration was required. Other documents suggested that, depending on the risk rating applied to the type of transactions being monitored, the TMS system was required to be calibrated or tuned at least every one to three years.

19. However, even though the policy required calibration or tuning of the TMS system at least every one to three years, the DWS Mutual Funds failed to comply with this

policy. Aside from one scenario-based rule receiving tuning in 2012 and 2013, since the funds began to use TMS in 2009, the system was only fully calibrated or tuned twice – in 2015 and in 2020 – or approximately every five years.

ii. The TMS System Automatically Closed Most AML Transaction Monitoring Alerts Without Review

20. Although the TMS system was calibrated in 2015, a high rate of TMS alerts continued to be automatically closed by the system. If an alert's risk score was below a certain value, the alert would be automatically closed by the TMS system without review by AML personnel. These automatic closure thresholds were supposed to be reviewed and adjusted, as needed, during the calibration process.

21. However, for the period January 2017 until December 2020, an average of over 600 TMS alerts were automatically closed each month, which was approximately 90% of all alerts generated by the TMS system for the DWS Mutual Funds. While samples of automatically closed alerts were selected and subject to periodic review, no review occurred from March 2017 through September 2018, and the remaining transaction monitoring alerts were never reviewed by AML personnel. As a result, the AML policies and procedures were not reasonably designed because they did not ensure that alerts were appropriately generated and reviewed.

22. By December 2020, the TMS system had been calibrated and also reprogrammed so that transaction monitoring alerts would no longer be automatically closed without review. After the tuning was completed, there was a three-fold increase in the number of alerts required to be reviewed each month by AML personnel, though the frequency of suspicious activity reports filed based on TMS alerts remained consistent.

iii. The TMS System Failed to Maintain all DWS Mutual Funds' Customer Transactions

23. Following an internal review conducted from 2019 to 2020, DIMA learned that, from at least January 2018, DWS Mutual Funds' transaction activity for approximately 53 of 391 different transaction types was not maintained or reviewed by the TMS system.

24. This missing transaction activity was not screened against the TMS scenario-based rules that were designed to detect potential suspicious activity.

25. The AML policies and procedures applicable to the TMS system prior to the internal review were not reasonably designed because they did not ensure that all transaction types were maintained and reviewed by the TMS system.

C. AML Training Specific to the DWS Mutual Funds' Business Was Not Conducted

26. The FinCEN AML Mutual Fund Program Rule requires that a mutual fund's AML program provide for ongoing training for appropriate persons.

27. As detailed in the Rule's adopting release, employees of the mutual fund and its affiliated service providers must be trained in BSA requirements relevant to their functions and

in recognizing possible signs of money laundering that could arise in the course of their duties, so that they can carry out their responsibilities effectively. The training program should provide both a general awareness of overall BSA requirements and money laundering issues, as well as more job-specific guidance regarding particular employee's roles and functions in the AML program.

28. From at least January 2017 until mid to late 2022, while mandatory BSA/AML training, including asset management-related topics, was provided to relevant employees, AML training that was specific to the DWS Mutual Funds or the risks applicable to mutual funds for those employees with mutual fund responsibilities failed to be conducted.

Violation

29. As a result of the conduct described above, DIMA caused the DWS Mutual Funds to violate Rule 38a-1 under the Investment Company Act. Rule 38a-1 requires investment companies to adopt and implement written policies and procedures reasonably designed to prevent violations of the federal securities laws by the funds, which includes the BSA, and any rules adopted thereunder by the U.S. Department of the Treasury. In April 2002, FinCEN adopted a rule requiring mutual funds to establish and implement an anti-money laundering program, including specific minimum requirements. DIMA caused the DWS Mutual Funds to violate Rule 38a-1, as DIMA was responsible for establishing AML policies and procedures for the funds. DIMA caused the DWS Mutual Funds' failure to: (i) develop and implement a reasonably designed AML compliance program for their mutual fund business and (ii) create and incorporate AML training specific to the DWS Mutual Funds' business into the AML training program for relevant employees.

Respondent's Remedial Efforts and Cooperation

30. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and cooperation afforded the Commission staff. Respondent's remediation of the issues described above includes the following: (i) in December 2021, the Board of the DWS Mutual Funds approved a written, standalone AML compliance program specifically for the DWS Mutual Funds' business, (ii) as of June 2021, samples of automatically closed TMS alerts for the period March 2017 through September 2018 were reviewed by DIMA personnel, (iii) as of April 2022, the DWS Mutual Funds ceased using the TMS system, and (iv) as of mid to late 2022, AML training specific to the DWS Mutual Funds business was created and incorporated into the AML training program for relevant employees.

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 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent DIMA cease and desist from committing or causing any violations and any future violations of Rule 38a-1 under the Investment Company Act.

B. Respondent DIMA shall, within ten (10) calendar days of the entry of this Order, pay a civil money penalty in the amount of \$6,000,000.00 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:

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 DIMA 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, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5010.

C. 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