

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6468 / October 24, 2023

INVESTMENT COMPANY ACT OF 1940
Release No. 35035 / October 24, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21786

In the Matter of

BLACKROCK ADVISORS, 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, AND SECTIONS 9(b) AND 9(f) OF
THE INVESTMENT COMPANY 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”), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against BlackRock Advisors, LLC (“BlackRock” 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, and Sections 9(b) and 9(f) of the Investment Company 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. BlackRock Advisors, LLC ("BlackRock"), a registered investment adviser to the BlackRock Multi-Sector Income Trust ("BIT"), a closed-end management investment company, failed to accurately describe a BIT investment in periodic reports filed with the Commission over a five-year period. As required, BIT files annual and semi-annual reports ("Reports") with the Commission that are publicly available, and those reports include details provided by BlackRock on BIT's investment positions. In eight such Reports filed from October 2015 to October 2019 ("Relevant Period"), BlackRock inaccurately described the Aviron Group LLC ("Aviron") in which BIT invested through a lending facility ("Aviron Investment"), and at one point was BIT's largest single investment, as being engaged in "Diversified Financial Services." Aviron, however, was neither diversified nor a financial services firm; instead, it was in the business of developing print and advertising plans for one to two films a year and funding these distribution expenses in exchange for an agreed-upon rate of return from the proceeds of the films. In addition, six such Reports during the Relevant Period inaccurately reflected the coupon rate to be paid by Aviron to BIT, making it appear that the nominal yield derived from the Aviron Investment would be larger than it in fact was in four Reports, smaller in one Report, and provided conflicting information in one Report. In 2019, in connection with a larger review of the Aviron Investment, BlackRock identified its reporting errors regarding Aviron and accurately reported the Aviron Investment going forward.

Respondent

2. **BlackRock**, a Delaware limited liability company based in New York, New York, has been registered as an investment adviser with the Commission since 1994. Among other things, BlackRock advises BIT.

Other Relevant Entities

3. **BIT** is a Delaware statutory trust traded on the New York Stock Exchange (NYSE: BIT) that operates as a registered closed-end management investment company and is advised by BlackRock. BIT generally invests in fixed income securities—including asset-backed securities, collateralized loan obligations, and mortgage related securities—to generate income. As of August 8, 2023, BIT's net asset value was \$547 million.

4. **Aviron** is a defunct Delaware limited liability company formed in July 2015 that was based in Beverly Hills, California. Aviron was a holding company with several subsidiaries engaged in the business of film distribution. BIT provided funding to these entities beginning in 2015.

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.

BIT and the Aviron Investment

5. BIT's prospectus dated February 28, 2013, described its investment objective as seeking "high current income" by holding, among others, "fixed income securities," including asset-backed securities, collateralized loan obligations, structured instruments, and mortgage related securities. BIT's annual report for the period ending October 31, 2015, identified such fixed income securities as making up 77.3% of the portfolio's NAV.

6. In 2015, BIT first invested in Aviron through a collateralized lending facility. Aviron, which was formed in July 2015, was engaged in the business of developing distribution plans for newly released movies and funding such distribution expenses in exchange for an agreed-upon rate of return from the proceeds of the films. During the Relevant Period, Aviron funded print and advertising expenses for six films. BIT invested in four of the six films offered by Aviron.

7. On October 20, 2015, BIT and Aviron executed a note ("2015 Agreement") that provided Aviron with up to \$38 million in funding. By October 31, 2015, BIT provided an initial \$12 million loan to fund the print and advertising expenses for one film. The 2015 Agreement had a one-year term with an option for BIT to renew it for an additional year, which BIT exercised. Under the 2015 Agreement, Aviron paid BIT a fixed 15% interest rate on the outstanding amount. BIT ultimately invested an additional \$21 million with Aviron under this arrangement.

8. On July 17, 2017, BIT and Aviron reached a new five-year agreement pursuant to which BIT agreed to provide Aviron with up to \$75 million in funding for print and advertising expenses to support movie releases (the "2017 Agreement"). The 2017 Agreement left in place the 15% interest rate for any outstanding balance from the initial \$12 million provision of funds under the 2015 Agreement and provided for a 5% fixed interest rate for the remaining outstanding funds under the 2015 Agreement and funds drawn under the new 2017 Agreement. To obtain the lower coupon rate, which reduced BIT's income on the Aviron Investment, Aviron contracted with an insurer, which later entered receivership proceedings in February 2018, to guarantee Aviron's payment obligations to BIT under the 2017 Agreement. At various points during the Relevant Period, including after the insurer entered receivership proceedings, BlackRock, based on input from a third party valuation service, reduced the fair value of the Aviron Investment. In March 2019, BIT provided the final funding in the amount of \$10 million under the 2017 Agreement to support print and advertising expenses for a single film.

9. During the Relevant Period, the Aviron Investment was BIT's only investment that involved the movie industry. At times, the Aviron Investment was the largest single position in BIT's portfolio, representing nearly 10% of BIT's reported NAV at its peak in October 2017. The table below illustrates the size of the position relative to the NAV of the BIT portfolio, as disclosed in its Reports:

<u>Date</u>	<u>BIT NAV</u>	<u>Aviron NAV</u>	<u>Pct. of Portfolio</u>
10/31/2015	\$ 726,431,674	\$ 12,000,000	1.65%
4/30/2016	\$ 701,062,531	\$ 11,204,407	1.60%
10/31/2016	\$ 726,381,045	\$ 4,266,266	0.59%
4/30/2017	\$ 731,997,307	\$ 28,319,468	3.87%
10/31/2017	\$ 765,859,146	\$ 74,884,091	9.78%
4/30/2018	\$ 719,597,609	\$ 59,549,190	8.28%
10/31/2018	\$ 710,831,530	\$ 63,083,736	8.87%
4/30/2019	\$ 698,147,227	\$ 55,032,500	7.88%
10/31/2019	\$ 648,617,300	\$ -	0.00%

Inaccurate Disclosures in BIT Reports

10. BIT is required to issue Reports pursuant to Rule 30e-1 of the Investment Company Act. During the Relevant Period, BIT filed eight Reports inaccurately describing the Aviron Investment in the “Schedule of Investments” section of the Reports. In these eight Reports, Aviron was described as a business in the “Diversified Financial Services” sector. This description was misleading, however, because Aviron in fact was a company engaged in a single line of business of developing plans for distributing films and funding the associated distribution costs for one to two films a year. In classifying Aviron as being engaged in “Diversified Financial Services,” instead of “Entertainment,” for example, the Aviron Investment was categorized in the 2017 BIT annual report along with investments in foreign banks, a private equity fund, and an aircraft leasing business controlled by a large trading and investment conglomerate, and an airline financing business. BlackRock sourced the inaccurate description of Aviron from a third party vendor and failed to correct the description on each occasion it was reported.

11. In addition, during the Relevant Period, six Reports incorrectly stated the coupon rate associated with the Aviron Investment. Four of these Reports described the rate as having a floating rate component in addition to the agreed fixed rate, specifically identifying that component as the 3-Month London Interbank Offered Rate (“3-Month LIBOR”). This was misleading because the actual Aviron Investment contained no such floating component. During the Relevant Period, the 3-Month LIBOR ranged from a low of approximately 0.32% to a high of 2.82%. In 2018, when 3-Month LIBOR was at its peak, adding the 3-Month LIBOR component, which averaged 2.3% in 2018, overstated the fixed coupon rates of 5% for one portion of the investment and 15% for the remainder of the investment by 46% and 17%, respectively. While one of BIT’s primary investment objectives was to seek “high current income,” the errors in the coupon information overstated the amount of potential income the Aviron Investment could contribute to the fund in certain periods. A fifth Report included the 3-Month LIBOR in addition to the coupon rate, but provided a composite rate that did not add up to the two components and

that was less than the actual coupon rate of the Aviron Investment. The sixth Report did not include a 3-Month LIBOR component and understated the Aviron Investment’s coupon rate.²

12. In 2019, in connection with BlackRock’s investigation of potential misconduct by Aviron’s CEO, BlackRock identified its reporting errors regarding Aviron. In BIT’s October 2019 Report, the description of the Aviron Investment was changed to reflect that its business was in the “Entertainment” sector. In addition, the 3-Month LIBOR component of the coupon rate was removed to accurately state the existing coupon rate. Also at that time, the Aviron Investment’s fair value was marked down to zero because Aviron ceased making interest payments, there was doubt the firm could repay the outstanding principal, and there was concern that some BIT assets had been misappropriated by Aviron’s CEO.

Violations

13. As a result of the conduct described above, BlackRock willfully³ violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which make it unlawful for any investment adviser to a pooled investment vehicle to “[m]ake any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle” or “engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.” Scierer is not required to establish a violation of Section 206(4) of the Advisers Act or the rules thereunder. *SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992).

14. Section 34(b) of the Investment Company Act makes it unlawful for any person to make any untrue statement of material fact in any registration statement, application, report, account, record, or other document filed with the Commission under the Investment Company Act, or to omit from any such document any fact necessary in order to prevent the statements made therein from being materially misleading. Establishing a violation of Section 34(b) of the Investment Company Act does not require proof of scierer. *In the Matter of Fundamental Portfolio*, Advisers Act Rel. No. 2146, 2003 WL 21658248, at *8 (July 15, 2003) (Commission Opinion). As a result of the conduct described above, BlackRock willfully violated Section 34(b) of the Investment Company Act.

BlackRock’s Cooperation and Remedial Efforts

15. In determining to accept the Offer, the Commission considered cooperation afforded the Commission staff and remedial acts undertaken by Respondent. During the investigation, BlackRock promptly provided witnesses, documents, and analysis on a voluntary

² The errors did not affect BIT’s reported rates of investment returns, which were generated by different systems and reported in aggregate for the fund.

³ “Willfully,” for purposes of imposing relief under Section 203(e) of the Advisers Act and Section 9(b) of the Investment Company 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).

basis. In addition, promptly after discovering the errors in the Reports and prior to the Commission commencing the investigation, BlackRock changed those disclosures to correctly reflect the Aviron Investment. BlackRock further remediated during the investigation by voluntarily covering losses associated with the Aviron Investment and providing BIT with a rate of return equal to the other investments in BIT's portfolio.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest to impose the sanctions agreed to in Respondent BlackRock's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

- A. Respondent BlackRock 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)-8 promulgated thereunder, and Section 34(b) of the Investment Company Act.
- B. Respondent BlackRock is censured.
- C. Respondent BlackRock shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$2,500,000.00 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 BlackRock 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 Andrew Dean, Co-Chief,

Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

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