UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100186 / May 21, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6609 / May 21, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21945

In the Matter of **KEY INVESTMENT SERVICES, LLC,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND 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 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Key Investment Services, LLC ("Key Investment Services" 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 and Section 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 finds[1] that:

Summary

1. These proceedings concern failures by dually-registered broker-dealer and investment adviser Key Investment Services to address conflicts of interest in compliance with Regulation Best Interest ("Regulation BI") and the Advisers Act. Between June 30, 2020 and February 2022, Key Investment Services failed to comply with Regulation BI's Disclosure Obligation, Conflict of Interest Obligation, and Compliance Obligation, which require broker-dealers to, among other things, provide certain prescribed written disclosures to their customers; have policies and procedures reasonably designed to identify and address conflicts of interest; and establish, maintain and enforce written policies and procedures reasonably designed to achieve compliance with Regulation BI. Key Investment Services also failed to disclose its conflicts of interest to certain of its investment advisory clients and to implement policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder. In particular, Key Investment Services, through its registered representatives and investment adviser representatives, recommended that certain of its brokerage customers and advisory clients transfer securities from Key Investment Services accounts to new investment accounts with Key Investment Services' affiliate Key Private Bank, a wealth management firm that is part of the same parent organization, without disclosing that the representatives would receive compensation for making the recommendations and for any securities transfers, and therefore had a conflict of interest. In addition, Key Investment Services' written policies and procedures were not reasonably designed to achieve compliance with Key Investment Services' disclosure obligations under Regulation BI and the Advisers Act with regard to conflicts of interest associated with the recommendations to transfer securities out of Key Investment Services brokerage and advisory accounts to investment accounts held at Key Private Bank or to identify and address the associated conflicts of interest. By failing to comply with three of Regulation BI's component obligations and its obligations under the Advisers Act, Key Investment Services violated the General Obligation of Regulation BI, found in Rule 15*l*-1(a)(1) under the Exchange Act ("General Obligation"), and Sections 206(2) and 206(4) of the Advisers Act, and Rule 206(4)-7 thereunder.

[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.

Respondent

2. **Key Investment Services, LLC** is an Ohio limited liability company, with its principal place of business in Brooklyn, Ohio. Key Investment Services has been registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act since November 2005, and as an investment adviser pursuant to Section 203(a) of the Advisers Act since January 2006. Key Investment Services has offices in 16 states, and has over 1,000 registered representatives and investment adviser representatives who provide services to over 175,000 customers and clients.

Background on Regulation BI

3. The General Obligation of Regulation BI, which had 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." Exchange Act Rule 15*l*-1(a)(1); *see also* Regulation Best Interest: The Broker- Dealer Standard of Conduct, Exchange Act Release No. 86031, at 45-46, 371 (June 5, 2019) (hereinafter "Adopting Release").

4. Broker-dealers like Key Investment Services 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"). *See* Exchange Act Rule 15*l*-1(a)(2); Adopting Release at 13. Because all of the component obligations are mandatory, failure to comply with any of them would violate the General Obligation. *See id.* at 72.

5. The Disclosure Obligation requires a broker-dealer or its associated person (e.g., registered representative), prior to or at the time of the recommendation, to provide, in writing, full and fair disclosure of all material facts about the scope and terms of its relationship with the retail customer, including that the firm or representative is acting in a broker-dealer capacity; the material fees and costs the retail 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. *See* Exchange Act Rule 15*l*-1(a)(2)(i). Additionally, the Disclosure Obligation requires a broker-dealer and/or its registered representative to provide full and fair disclosure in

writing, prior to or at the time of the recommendation, of 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 [Form CRS],[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.

6. The Conflict of Interest Obligation requires broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to identify and address conflicts of interest associated with its recommendations to retail customers. *See* Exchange Act Rule 15*l*-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, mitigate, or eliminate them. *Id.* Regulation BI defines a conflict of interest as an interest that might incline a broker-dealer or a natural person who is an associated person of a broker-dealer (e.g., registered representative), consciously or unconsciously, to make a recommendation that is not disinterested. Exchange Act Rule 15*l*-1(b)(3).

7. The Compliance Obligation requires broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Regulation BI. Exchange Act Rule 15*l*-1(a)(2)(iv). A broker-dealer'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.

Facts

8. Between June 30, 2020 and February 2022, Key Investment Services, through its registered representatives and investment adviser representatives, recommended that retail customers and clients with $1 million or more of investable assets consider transferring securities from their Key Investment Services brokerage and investment advisory accounts to new Key Private Bank investment accounts. The Key Investment Services representatives also scheduled meetings between the customers and representatives of Key Private Bank. Key Investment Services paid its registered representatives and investment adviser representatives a finders' fee if

[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 investments advisers. *See* Form CRS Relationship Summary; Amendments to Form ADV, Exchange Act Release No. 86032, Advisers Act Release No. 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).

they made three or more customer referrals to Key Private Bank in a particular quarter, regardless of whether the referrals resulted in a transfer of securities to Key Private Bank. For those referral recommendations that resulted in a transfer of securities to Key Private Bank, Key Investment Services paid the registered representatives and investment adviser representatives an additional annual fee based on the value of any securities and other assets that were transferred, plus any other assets the customers and clients placed in their Key Private Bank accounts.

9. Key Investment Services and its representatives did not disclose in writing that the representatives were acting as associated persons of Key Investment Services when they made the transfer recommendations, or that the representatives would receive compensation in the form of finders' fees and annual fees for making the transfer recommendations, or the conflicts of interest associated with the transfer recommendations.

10. Key Investment Services adopted and implemented new written policies and procedures to comply with Regulation BI prior to Regulation BI's compliance date of June 30, 2020. Between June 2020 and February 2022, Key Investment Services' written policies and procedures related to the Conflict of Interest Obligation defined a conflict as "any economic benefit that would incentivize the firm or its financial professional to put their interests ahead of the interests of the retail customer," including, among other examples, "compensation arrangements (e.g., differential compensation depending on the recommendation provided to the retail customer)." The firm's policy stated that it would "generally disclose all firm-level conflicts it identifies, and evaluate on a periodic basis whether mitigation measures or elimination may be necessary" and provided for any conflicts of interest to be reviewed at least annually and periodically, as needed, by an Executive Committee. Key Investment Services' Registered Representative Manual further stated that all conflicts of interest were fully detailed and disclosed to customers in its Best Interest Client Disclosure Guide. Despite the periodic review of conflicts, Key Investment Services' written policies and procedures were not reasonably designed to satisfy Key Investment Services' Conflict of Interest Obligation because they did not provide any guidance or procedures for how Key Investment Services' registered representatives and supervisors could identify, review, or address conflicts of interest related to the receipt of finders' fees and annual fees in connection with the recommendation of opening new investment accounts and the transfer of securities from Key Investment Services brokerage accounts to Key Private Bank investment accounts through elimination, mitigation or disclosure, as appropriate.

11. Between June 30, 2020 and February 2022, Key Investment Services' written policies and procedures related to compliance with Regulation BI's Disclosure Obligation specified that Key Investment Services' registered representatives would provide Form CRS and Key Investment Services' Best Interest Client Disclosure Guide to customers whenever they made a recommendation to a prospective customer, opened a new account, or made a new recommendation to an existing customer. Key Investment Services' written policies and procedures defined what constitutes a recommendation, including "account opening, financial plan, securities transaction (trade, transfer of assets, model change, etc.), rollover of assets from an employee sponsored plan, and taking a retirement plan distribution (to invest)" and provided for Key Investment Services'

disclosures to be reviewed at least annually and periodically, as needed, by an Executive Committee. When a material conflict relating to a recommendation was identified, the policies and procedures further required that the Executive Committee ensure that the firm updated its Regulation Best Interest disclosures relating to the conflict. Despite the periodic review of its disclosures, Key Investment Services' policies and procedures were not reasonably designed to achieve compliance with Regulation BI because they did not provide a mechanism for the firm to identify and disclose in its Form CRS, Best Interest Client Disclosure Guide or any other document provided to its retail customers that registered representatives who made recommendations to open new investment accounts and transfer securities from Key Investment Services brokerage accounts to Key Private Bank investment accounts would receive finders' fees and annual fees based on the total value of the securities and other assets transferred to customers' Key Private Bank accounts. This information constituted material facts relating to a conflict of interest associated with these recommendations, and the firm's failure to disclose it failed to comply with Regulation BI's Disclosure Obligation.

12. As a result of the conduct discussed above, Key Investment Services failed to satisfy the General Obligation of Regulation BI by failing to comply with the Disclosure Obligation, Conflict of Interest Obligation, and Compliance Obligation.

13. As an investment adviser, Key Investment Services also was obligated to disclose all material facts to its advisory clients, including conflicts of interest between itself, its investment adviser representatives, and its clients that could affect the advisory relationship and how those conflicts could affect the advice Key Investment Services provided to its clients. To meet this fiduciary obligation, Key Investment Services was required to provide its advisory clients with full and fair disclosure of the payments related to the investment adviser representatives' recommendation that certain clients open accounts at Key Private Bank and payments related to the transfers of securities from Key Investment Services to Key Private Bank, so the clients could understand the resulting conflicts of interest. By failing to disclose the conflict of interest created by Key Investment Services' payment of additional compensation to its investment adviser representatives who advised certain of their clients with $1 million or more of investable assets to transfer their securities from Key Investment Services to Key Private Bank, Key Investment Services failed to comply with Section 206(2) of the Advisers Act.

14. Key Investment Services had written policies and procedures that required disclosure of all conflicts of interest to its advisory clients, however, this policy did not require any disclosure of compensation related to the account referrals and securities transfers from Key Investment Services to Key Private Bank. As a result, Key Investment Services did not adopt and implement written policies and procedures reasonably designed to disclose to its advisory clients the conflicts of interest created by the additional compensation paid to investment adviser representatives for recommending that certain of their clients open accounts at Key Private Bank and transfer securities from their Key Investment Services accounts to Key Private Bank.

15. In February 2022, the Commission's Division of Examinations examined Key Investment Services and issued a deficiency letter concerning the firm's lack of compliance with Regulation BI. Shortly thereafter, Key Investment Services addressed the deficiencies in its policies, procedures, and practices by adopting new written policies and procedures related to the disclosure of conflicts of interest concerning its registered representatives' and investment adviser representatives' recommendations of securities transfers to its affiliates.

Violations

16. As a result of the conduct described above, Key Investment Services willfully[3] violated Rule 15*l*-1(a) under the Exchange Act.

17. As a result of the conduct described above, Key Investment Services willfully violated Section 206(2) of the Advisers Act, which prohibits investment advisers from engaging "in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." A violation of Section 206(2) may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.*

18. As a result of the conduct described above, Key Investment Services willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require 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 15(b) and 21C of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Rule 15*l*-1(a) under the Exchange Act.

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[3] "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act and 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).

B. Respondent 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.

C. Respondent is censured.

D. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $223,228 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 Key Investment Services 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.

E. 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