UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6954 / March 23, 2026

ADMINISTRATIVE PROCEEDING
File No. 3-22617

In the Matter of **ALLY INVEST ADVISORS INC.,** **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 Ally Invest Advisors Inc. ("Ally Invest" 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 finds[1] that:

Summary

1. This proceeding concerns breaches of fiduciary duty by Ally Invest, a registered investment adviser, for failing to fully and fairly disclose (1) material facts concerning its selection of a thirty percent cash allocation for its no advisory fee Cash-Enhanced "robo-advisor" accounts ("Cash-Enhanced Accounts"), including the resulting conflict of interest; and (2) Ally Invest's application of its stated investment methodology in Ally Invest's Cash-Enhanced Accounts. Starting in September 2019, Ally Invest allocated thirty percent of client assets in its Cash-Enhanced Accounts to cash, but failed to disclose that it had a conflict of interest in setting this allocation because the allocation percentage was selected, in part, to generate a financial benefit for Ally Invest's affiliated broker-dealer and its affiliated bank to make up for the revenue Ally Invest lost from not charging an advisory fee on these accounts. In addition, from September 2019 to October 2022, Ally Invest inaccurately disclosed that its portfolio management services for its Cash-Enhanced Accounts were based on an investment methodology called Modern Portfolio Theory when, in fact, only the non-cash portion of the assets in the Cash-Enhanced Accounts was managed according to Modern Portfolio Theory. As a result of this conduct, Ally Invest willfully violated Section 206(2) of the Advisers Act.

Respondent

2. **Ally Invest Advisors Inc.** is an SEC-registered investment adviser that is a wholly owned subsidiary of Ally Financial Inc. Ally Invest is incorporated in Delaware, with its principal office and place of business in Charlotte, North Carolina. In its August 4, 2025, Form ADV filing, Ally Invest reported having 79,943 advisory clients and regulatory assets under management totaling $1.389 billion. Ally Invest has no disciplinary history.

Background

3. Ally Invest offers, among other products and services, "robo-advisor" accounts. Beginning in September 2019, Ally Invest began marketing and offering its Cash-Enhanced "no advisory fee" robo-advisor account to existing and potential clients in part to attract novice retail investors. Ally Invest allocated thirty percent of the total portfolio in each client's Cash-Enhanced Account to cash, and the other seventy percent of total account assets was invested in a mix of securities selected by Ally Invest. The client cash in the Cash-Enhanced Accounts was custodied by a non-affiliated clearing broker. The non-affiliated clearing broker deposited the cash at various banks, including Ally Invest's affiliated bank, to be loaned out, and interest earned on the cash

[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.

deposits made was paid to the non-affiliated clearing broker. The non-affiliated clearing broker, in turn, paid Ally Invest's affiliated broker dealer a rebate, representing a portion of the interest generated by the cash in the Cash-Enhanced Accounts. The value of the rebate that Ally Invest's affiliated broker-dealer received from the non-affiliated clearing broker made up for at least some of the revenue Ally Invest lost by not charging an advisory fee for the Cash-Enhanced Accounts.

4. From September 2019 through September 2022, the Cash-Enhanced Account was the default account recommended to clients when they opened a new robo-advisor account with Ally Invest.

Conflict of Interest Concerning Income from Thirty Percent Cash Allocation

5. From September 2019 until August 2025, Ally Invest failed to adequately disclose all material facts, including its conflict of interest, associated with setting a thirty percent cash allocation for the Cash-Enhanced Accounts. Because Ally Invest's affiliated broker-dealer received a rebate reflecting a portion of the interest that was generated by the cash held in the Cash-Enhanced Accounts, Ally Invest had an incentive to set a higher cash allocation percentage for these accounts. Ally Invest's affiliated bank also received cash deposits from certain client accounts at the non-affiliated clearing broker, including the Cash-Enhanced Accounts, and earned interest on such deposits by loaning the deposited funds. The incentive to set a higher cash allocation was heightened given that Ally Invest charged no advisory fees on the Cash-Enhanced Accounts. Yet, Ally Invest did not disclose all material facts about its conflict of interest, including its reasons for selecting the thirty percent cash allocation. Although Ally Invest considered several factors in setting the cash allocation at thirty percent, and advertised to clients that this allocation created a valuable cash buffer meant to balance out potential risk in the Cash-Enhanced portfolios, it failed to disclose that the thirty percent cash allocation was selected in part to make up for it not charging an advisory fee on the Cash-Enhanced Accounts, or the associated conflict of interest.

6. In August 2025, Ally Invest updated its Form ADV Part 2A to provide disclosure concerning its conflict of interest in setting the cash allocation for the Cash-Enhanced Accounts.

Disclosure Regarding Use of Modern Portfolio Theory

7. Ally Invest disclosed in its Forms ADV Part 2A from September 2019 through October 2022 that its "portfolio management services are based on Modern Portfolio Theory." Ally Invest's statement about Modern Portfolio Theory was misleading because Ally Invest did not use Modern Portfolio Theory to select the cash allocation portion of the Cash-Enhanced Accounts. Rather, the portfolios' cash allocation was based, in part, on Ally Invest's desire to make up for revenue lost from not charging an advisory fee on the Cash-Enhanced Accounts. Instead, Ally Invest used Modern Portfolio Theory to guide the investment of only the seventy percent of a client's account that was allocated to securities rather than cash. Ally Invest, therefore, failed to accurately disclose its use of Modern Portfolio Theory, including that the cash allocation

representing thirty percent of its clients' portfolios was not selected or based on Modern Portfolio Theory.

8. In October 2022, Ally Invest updated its Form ADV Part 2A to disclose that it constructed only "the invested (i.e., non-cash) portions of [its] portfolios based on Modern Portfolio Theory."

Violation

9. As a result of the conduct described above, Ally Invest willfully[2] violated Section 206(2) of the Advisers Act, which prohibits an investment adviser, directly or indirectly, from engaging "in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." Scienter is not required to establish a violation of Section 206(2), which may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)).

Undertakings

10. Respondent has undertaken to:

a) Within 45 days of the entry of this Order, Respondent shall notify affected investors (i.e., those former and current clients who were affected by the practices detailed above) of the settlement terms of this Order by sending a copy of this Order to each affected investor via mail, email, or such other method not unacceptable to the Commission staff.

b) Certify, in writing, compliance with the undertaking set forth above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Christina N. Filipp, Assistant Director, Division of

[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). 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).

Enforcement, with a copy to the Office of Chief Counsel of the Enforcement Division's mailbox for compliance certifications (SECSettlementCertifications@SEC.GOV), no later than 60 days from the date of the completion of the undertakings.

IV.

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

Accordingly, pursuant to 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 Section 206(2) of the Advisers Act.

B. Respondent is censured.

C. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $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 Ally Invest 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, Division of Enforcement, Securities and Exchange Commission, 100 F St., 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.

E. Respondent shall comply with the undertakings enumerated in Section III, Paragraph 10 above.

By the Commission.

Vanessa A. Countryman
Secretary