

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61181 / December 16, 2009

INVESTMENT ADVISERS ACT OF 1940
Release No. 2964 / December 16, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13717

<p>In the Matter of</p> <p>EQUITY SERVICES, INC.,</p> <p>Respondent.</p>

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AND SECTION 15(b)(4) OF THE SECURITIES EXCHANGE ACT OF 1934

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 Section 15(b)(4) of the Securities Exchange Act of 1934 ("Exchange Act") against Equity Services, Inc. ("Respondent" or "ESI").

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, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 and Section 15(b)(4) of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. This matter involves ESI's failure to provide promised asset allocation monitoring services to certain of ESI's advisory clients. Beginning in early 2001, ESI marketed and sold an investment management program called ESI Illuminations Select through its nationwide network of investment advisory representatives. This program allowed investors to choose a model asset allocation portfolio of investments. From the program's inception through at least the summer of 2005, ESI represented to both current and prospective clients that it would periodically monitor each Illuminations Select account to determine whether its asset allocation remained consistent with the allocation associated with the chosen model portfolio and, if the allocation did not, take steps to ensure that the account was invested in the manner directed by the client. However, from the program's inception and continuing until the summer of 2005, ESI failed to monitor the asset allocation of Illuminations Select accounts.

Respondent

2. **Equity Services, Inc.**, headquartered in Montpelier, Vermont, is a registered investment adviser (SEC File No. 801-41722) and broker-dealer (SEC File No. 8-14286) operating through a nationwide network of offices. ESI conducts its investment advisory business under the name ESI Financial Advisers. As of August 27, 2009, ESI Financial Advisers had approximately \$830 million in assets under management. ESI is a wholly-owned subsidiary of NLV Financial Corporation, which does business under the name National Life Group.

Facts

The ESI Illuminations Select Program

3. The ESI Illuminations Select Program is a wrap asset allocation/investment management program that utilizes open-end no-load and load-waived mutual funds as well as separately managed accounts. Investments in each client's account are spread among various mutual funds and/or general securities based upon one of seven asset allocation model portfolios. The models are comprised of a mix of equity, fixed income and money market offerings, and offer various levels of risk, with the most aggressive models being more heavily weighted toward equity offerings.

4. ESI introduced the Illuminations Select Program in early 2001 through its

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.

nationwide network of investment advisory representatives. Until the spring of 2002, the Illuminations Select Program permitted its clients to invest only in mutual funds. In approximately June 2002, ESI introduced a new Illuminations Select product called Discoverer Select, which permitted clients to invest part of their account assets in mutual funds and to have the rest of their account assets managed by one or more managers selected by the client from a list of managers recommended by ESI ("separately managed accounts"). When it introduced the Discoverer Select product, ESI renamed the original mutual fund-only Illuminations Select product as Flagship Select. In approximately April 2003, ESI introduced a third Illuminations Select product, Navigator Select, which permitted clients to invest only through separately managed accounts. From early 2001 through at least the summer of 2005, the minimum initial investment in a Flagship Select account, a Discoverer Select account, and a Navigator Select account was \$50,000, \$250,000, and \$500,000, respectively. During that period, ESI generally charged Illuminations Select Program clients an advisory fee ranging from 1 to 2.5 percent of total assets.

ESI Failed to Monitor Accounts

5. From the program's inception through at least the summer of 2005, ESI represented to both current and prospective clients that it would periodically monitor each Illuminations Select account to determine whether its asset allocation remained consistent with the allocation associated with the chosen model portfolio and, if the allocation did not, take steps to ensure that the account was invested in the manner directed by the client. For example, one marketing piece stated: "Monitoring your portfolio and maintaining your asset allocation in the face of market changes are key considerations for the ESI Illuminations Select Program, thus ensuring your portfolio continues to be consistent with your investment objectives." Another promotional document stated: "Throughout your relationship, you will receive professional portfolio management according to your asset allocation plan. Your investments are continuously monitored and, as changes dictate, rebalanced to ensure they conform to your original asset mix." And a third marketing brochure stated: "When the Flagship Select program is utilized, the Investment Advisor Representative . . . and client choose the investments within the model. The portfolio choices and investment selections are monitored . . . Individual assets are reviewed daily, portfolios reviewed weekly, and re-balancing done automatically."

6. From the inception of the ESI Illuminations Select Program through the summer of 2005, ESI had monthly reports prepared that identified each account whose asset allocation varied by at least 10% from the chosen model portfolio. However, throughout this period, no one at ESI reviewed these variance reports or otherwise monitored the asset allocation of Illuminations Select accounts and ESI therefore failed to identify those accounts whose asset allocations were inconsistent with the chosen model portfolio.

7. In August 2003, members of the Commission's Office of Compliance Inspections and Examinations ("OCIE") staff conducted a routine examination of ESI. In the course of this examination it was determined that, of the 563 ESI Illumination Select accounts then in

existence, 232 (more than 41%) were allocated in a manner that was inconsistent with the chosen model portfolio. In a letter to Commission staff dated October 29, 2003, ESI stated that, from that point on, ESI would "monitor on a weekly basis activity in all [Illuminations Select] accounts to insure that the current portfolio allocation is substantially consistent with the model selected by the client" Consistent with this commitment, ESI amended its Form ADV on October 24, 2003 to state:

"[ESI] will conduct oversight reviews of Illuminations Select accounts . . . [ESI] will review weekly exception reports intended to highlight any accounts where the investment allocation may be inconsistent with the client's investment objective and will take appropriate action to ensure that the actual investments are aligned with the client's investment objective. These reviews will be conducted by the Senior Vice President - Securities Operations, the Director - Advisory Services, or another [ESI] home office staff member acting under the supervision of either the above two managers."²

8. In late 2004, ESI's compliance department conducted a review of ESI's business and found that ESI was still not reviewing the monthly variance reports and that the asset allocation of more than 250 Illuminations Select accounts varied significantly from the allocation associated with the chosen model portfolio. The compliance department incorporated this finding into an April 2005 report to several ESI officials. In the wake of the compliance department's review, ESI determined to hire additional staff to perform the necessary monitoring of client accounts. Such staff did not begin working on the monitoring until September 2005.

9. In late August 2005, the OCIE staff conducted another examination of ESI that showed that ESI was still not periodically monitoring the asset allocations of Illuminations Select accounts. By late August 2005, the asset allocation of 679 of the 1,074 Flagship Select accounts that had been opened up to that time (more than 63%) had varied by at least 10% from the allocation associated with the chosen model portfolio for a period of at least 30 days.

² This language was inadvertently removed from ESI's Form ADV in December 2003 when ESI amended its Form ADV for an unrelated reason.

Violations

10. As a result of the conduct described above, ESI willfully³ violated Section 206(2) of the Advisers Act in that it engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon clients or prospective clients. Specifically, by misrepresenting that it would periodically monitor each ESI Illuminations Select account to determine whether its asset allocation remained consistent with the allocation associated with the chosen model portfolio and, if the allocation did not, take steps to ensure that the account was invested in the manner directed by the client, ESI engaged in conduct that operated as a fraud or deceit upon its clients.

Respondent's Remedial Acts

11. In determining to accept Respondent's Offer, the Commission considered the remedial acts undertaken by Respondent, including the hiring of additional staff and the compensating of Illuminations Flagship Select, Discoverer Select and Navigator Select clients harmed by Respondent's conduct in the amount of approximately \$1.7 million.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in ESI's Offer of Settlement. It is hereby ORDERED that:

- A. Pursuant to Section 203(e) of the Advisers Act and Section 15(b)(4) of the Exchange Act, ESI is hereby censured.
- B. Pursuant to Section 203(k) of the Advisers Act, ESI shall cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act.
- C. Pursuant to Section 203(i) of the Advisers Act and Section 21B of the Exchange Act, ESI shall, within ten business days of the entry of this Order, pay to the United States Treasury, a civil penalty in the amount of \$300,000. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717 until the obligations are paid in full. Payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money

³ A willful violation of the securities laws means merely "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." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies ESI as the Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to John T. Dugan, Associate Director, Division of Enforcement, Securities and Exchange Commission, 33 Arch Street, Suite 2300, Boston, MA 02110.

By the Commission.

Elizabeth M. Murphy
Secretary