

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3706 / October 28, 2013**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15589**

<p><b>In the Matter of</b></p> <p><b>GW &amp; WADE, LLC,</b></p> <p><b>Respondent.</b></p>
--

**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 GW & Wade, LLC (“GW & Wade” 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 that:

#### Summary

1. Historically, registered investment adviser GW & Wade had custody of certain client assets that it could access and transfer to third parties but it failed to obtain an examination of those assets by an independent public accountant and to identify those assets in its public disclosures. GW & Wade also had not adopted or implemented policies and procedures reasonably designed to prevent violations of the securities laws and rules governing custody of client assets or kept required books and records for certain custodied accounts. In addition, GW & Wade did not adequately implement its policies and procedures for calculating its advisory fees in discretionary accounts, which resulted in billing overcharges to certain clients.

#### Respondent

2. GW & Wade (SEC File No. 801-27292) is a Massachusetts limited liability company with its principal place of business in Wellesley, Massachusetts. GW & Wade has been registered with the Commission as an investment adviser since 1986. As of April 1, 2013, GW & Wade provided discretionary and non-discretionary investment management services to approximately 1600 clients (6,700 accounts) and managed approximately \$3.8 billion in assets. GW & Wade has an affiliated broker-dealer, GW & Wade Asset Management Company, LLC (SEC File No. 8-42013), which has been registered with the Commission since 1990.

#### Background

3. GW & Wade is a registered investment adviser that manages assets for primarily high net worth retail clients. GW & Wade typically invests client assets in mutual funds.

4. GW & Wade has had several types of client arrangements that gave it access to, and, in certain cases, the ability to transfer, client funds but for which it did not have proper safeguards as a custodian. In one type of client arrangement, GW & Wade maintained Letters of Authorization ("LOAs") signed by some clients but otherwise in blank for over 900 accounts. When a client requested that GW & Wade transfer funds, GW & Wade would fill them out. The practice enabled GW & Wade to transfer client funds without having to obtain client signatures in every instance. GW & Wade investment advisory representatives on occasion also cut out the signature from a previously executed LOA and pasted it onto a new LOA to effect authorized transfers of client funds.

5. This practice exposed GW & Wade's clients to potential harm and ultimately contributed to a third-party fraud that occurred in one client account in June 2012 when an individual hacked into a client's email account and, posing as the client, sent emails to GW & Wade requesting that the client's funds be wired to a foreign bank. For each wire request, the

individual posing as the client stated that he could not access a telephone (*e.g.*, in a meeting and at a funeral) but needed funds disbursed the same day. GW & Wade filled out an LOA with a photocopied client signature and provided it to its clearing firm, which wired the funds to the foreign bank. Because GW & Wade maintained pre-signed LOAs in its files and did not have any procedures in place to confirm the authenticity of transfer requests made by email, the client's funds were wired without the client's knowledge or authorization. The third-party fraud was not discovered until three separate wires totaling \$290,000 had been sent to the foreign bank. GW & Wade compensated the client for all losses associated with these unauthorized wires.

6. In addition to the accounts for which GW & Wade maintained pre-signed LOAs, GW & Wade also had custody of assets in accounts where it (i) had been granted third-party delegation on check-writing accounts, and (ii) possessed log-in information and passwords for outside accounts (*e.g.*, employee retirement and brokerage accounts).

7. With respect to these client arrangements giving rise to custody, the firm failed to obtain an examination by an independent public accountant and to identify the assets of which it had custody in its public filings. As a result, these assets were not subject to surprise audits (as the Advisers Act custody rule requires), and GW & Wade's disclosures regarding custody in its Forms ADV (the publicly-filed form used by investment advisers to register with the Commission) were inaccurate. For instance, in its responses to Item 9.A.(2) of Part 1A of the Form ADV and Item 15 of Part 2A of the Form ADV (the brochure), GW & Wade understated the amount of client funds in its custody and did not accurately disclose all types of custody arrangements it had with clients.

8. As evidenced in part by the June 2012 hacking incident described above, GW & Wade's policies and procedures for its custody arrangements also were inadequate to protect client assets. In addition, the firm's books and records were deficient because GW & Wade did not maintain records of account activity in outside accounts where it possessed password-access and the ability to transfer funds.

9. GW & Wade also failed to implement adequately its policies and procedures for calculating its advisory fee and billing clients. With respect to its discretionary accounts, GW & Wade has a policy of excluding the mutual fund class C shares held by its clients from its advisory fee calculation because mutual fund class C shares may carry up to a 1% annual fee for sales-related expenses, pursuant to Rule 12b-1 of the Investment Company Act of 1940 ("Rule 12b-1 fees"). In this case, GW & Wade's affiliated broker-dealer receives the Rule 12b-1 fees paid on the class C shares held by GW & Wade clients. GW & Wade has a manual process for backing out the mutual fund C shares from its advisory fee calculation. Typically, the assistant to a particular client's investment advisory representative is responsible for calculating the advisory fee and properly segregating class C shares from the calculation. This manual bill review and fee calculation process resulted in some clients being overcharged because their advisory fees erroneously included fees attributable to their class C share holdings.

## Violations

10. As a result of the conduct described above, GW & Wade willfully<sup>1</sup> violated Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder. Section 206(4) prohibits an investment adviser from engaging in acts, practices or courses of business that are fraudulent, deceptive, or manipulative, as defined by the Commission in rules and regulations promulgated under the statute. Rule 206(4)-2 requires registered advisers with custody of client assets to implement certain enumerated controls designed to protect those assets from loss, misappropriation, misuse, or the adviser's insolvency, including subjecting custodied assets to surprise, independent examination on an annual basis. By failing to do so, GW & Wade willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder.

11. As a result of the conduct described above, GW & Wade willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder. Rule 206(4)-7 requires registered advisers, among other items, to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act. By failing to adopt and implement policies and procedures reasonably designed to prevent violations of the securities laws and rules governing custody of client assets, GW & Wade willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

12. As a result of the conduct described above, GW & Wade willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein." By failing to identify certain of its custody arrangements and fully disclose its assets under custody in its public filings with the Commission, GW & Wade willfully violated Section 207 of the Advisers Act.

13. As a result of the conduct described above, GW & Wade willfully violated Section 204 of the Advisers Act and Rules 204-2(a)(3) and 204-2(b)(1) promulgated thereunder, which require investment advisers registered with the Commission to make and keep for certain periods such records and make and disseminate such reports as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. Rule 204-2(a)(3) requires an adviser to maintain a memorandum of each order given by the adviser for the purchase or sale of any security, of any instruction received by the adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Rule 204-2(b)(1) requires advisers with custody of client assets to make and keep a journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts. By failing to keep adequate books and records of activity in outside client accounts of

---

<sup>1</sup> 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)).

which GW & Wade has custody, GW & Wade willfully violated Section 204 of the Advisers Act and Rules 204-2(a)(3) and 204-2(b)(1) promulgated thereunder.

### **Respondent's Cooperation and Remedial Acts**

14. In determining to accept GW & Wade's settlement offer, the Commission considered remedial acts promptly undertaken by GW & Wade and cooperation afforded the Commission staff. In particular, after its violations were identified but prior to resolution of this proceeding, GW & Wade, among other things, (i) implemented a Wire, Checks, and Journal Disbursements Policy, which eliminates the use of pre-signed LOAs and requires investment advisory representatives to confirm transfer requests with clients by telephone; (ii) agreed to implement (and is in the process of implementing) account management system under which access to most outside client accounts will be read-only; (iii) implemented policies and procedures for tracking and safeguarding password and log-in information for outside client accounts and for maintaining appropriate books and records of all transactions in custodied outside accounts, irrespective of whether GW & Wade conducts transactions in those accounts; (iv) implemented a policy for heightened review of client bills to prevent advisory fee overcharges; and (v) reimbursed all clients holding class C mutual fund shares who were overcharged advisory fees during 2011 and 2012.

### **Undertakings**

15. GW & Wade undertakes to:

A. Retain, at its expense and within thirty (30) days of the issuance of this Order, an independent consultant (the "Consultant") not unacceptable to the staff of the Division of Enforcement. Respondent shall require the Consultant to conduct a comprehensive review of GW & Wade's written compliance policies and procedures reasonably designed to ensure that it is meeting its custody and related books and records obligations, charging its advisory fee accurately, and otherwise safeguarding client assets, in compliance with the Advisers Act.

B. Require the Consultant to complete its review and submit a written report (the "Report") to GW & Wade and Commission staff within one hundred twenty (120) days of the issuance of this Order. GW & Wade shall require that the Report describe the review performed, the conclusions reached, and recommendations for any changes in or improvements to GW & Wade's supervisory and compliance policies and procedures.

C. Within sixty (60) days of receiving the Report, adopt and implement all recommendations contained in the Report; provided, however, that as to any recommendation that GW & Wade considers to be, in whole or in part, unduly burdensome or impractical, GW & Wade may submit in writing to the Consultant, within thirty (30) days of receiving the Report, an alternative policy, practice, or procedure designed to achieve the same objective or purpose. Within forty-five (45) days of receiving the Report, GW & Wade and the Consultant shall attempt in good faith to reach an agreement relating to each recommendation that GW & Wade considers

to be unduly burdensome or impractical. GW & Wade shall ultimately abide by the determinations of the Consultant.

D. Require the Consultant to enter into an agreement that provides for the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with GW & Wade, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Consultant will require that any firm with which the Consultant is affiliated or of which the Consultant is a member, and any person engaged to assist the Consultant in performance of the Consultant's duties under this Order shall not, without prior written consent of Commission staff, enter into any employment consultant, attorney-client, auditing or other professional relationship with GW & Wade, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

E. To ensure the independence of the Consultant, GW & Wade shall not have the authority to terminate the Consultant without prior written approval of Commission staff and shall compensate the Consultant and persons engaged to assist the Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

F. For good cause shown, the Commission's staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

16. Within 365 days of the issuance of this Order, GW & Wade undertakes to reimburse in full all of its clients who since January 1, 2005, have paid excess advisory fees in accounts due to GW & Wade's failure to exclude mutual fund class C share holdings from the advisory fee calculation.

17. GW & Wade undertakes to provide notice of these proceedings to its clients, as follows:

A. Within thirty (30) days of the issuance of this Order, GW & Wade undertakes to revise the Form ADV to include the paragraphs contained in Section III of this Order.

B. Within thirty (30) days of the issuance of this Order, GW & Wade undertakes to mail a copy of the Form ADV which incorporates the paragraphs contained in Section III of this Order to each of GW & Wade's existing clients.

C. GW & Wade further undertakes, for a period of one year from the date of issuance of this Order, to provide a copy of the Form ADV to each prospective client prior to entering into any written or oral investment advisory contract.

18. GW & Wade shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, 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 GW & Wade agrees to provide such evidence. The certification and supporting material shall be submitted to Kevin M. Kelcourse, Assistant Director, Asset Management Unit, Boston Regional Office, Securities and Exchange Commission, 33 Arch Street, Suite 2300, Boston, Massachusetts 02110, with a copy to the Office of Chief Counsel of the Enforcement Division (Securities and Exchange Commission, 100 F Street, NE, Washington, DC, 20549), no later than sixty (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 Respondent'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 Sections 204, 206(4), and 207 of the Advisers Act, and Rules 204-2, 206(4)-2 and 206(4)-7 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$250,000 to the United States Treasury. 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 GW & Wade 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 Kevin M. Kelcourse, Assistant Director, Asset Management Unit, Boston Regional Office, Securities and Exchange Division, 33 Arch Street, Suite 2300, Boston, Massachusetts 02110. If transmitting payment electronically by wire or directing payment from a bank account via Pay.gov, Respondent shall send a letter to Mr. Kelcourse confirming the date of payment, method of payment (e.g., wire or Pay.gov), and tracking information (e.g., agency tracking identification number).

D. Respondent shall comply with the undertakings enumerated in Section III.15-18 above.

By the Commission.

Elizabeth M. Murphy  
Secretary