

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 71850 / April 3, 2014**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3808 / April 3, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15822**

**In the Matter of**

**TRANSAMERICA**  
**FINANCIAL ADVISORS,**  
**INC.**

**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 Transamerica Financial Advisors, Inc. (“TFA” 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 contained in the Order, 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 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<sup>1</sup> that:

#### A. Summary

1. TFA, a registered investment adviser and broker-dealer, failed to apply advisory fee discounts to certain retail clients in several of its advisory fee programs contrary to its disclosures to clients and its policies and procedures. During the relevant period, TFA offered clients in these programs breakpoint discounts that reduce the total advisory fee as the clients’ assets in the programs increase. In various Form ADV Part 2 filings and in account opening documents, TFA represented that clients may request that TFA aggregate the values of certain related accounts to achieve these discounts. In addition, TFA’s policies and procedures required that clients receive the savings from breakpoint discounts. Despite these disclosures, from January 2009 to June 30, 2013 (the relevant period), TFA failed, in certain instances, to apply the breakpoint discounts despite client requests for aggregation. TFA also failed to adopt and implement adequate policies and procedures to ensure that its clients’ fees were calculated as represented. The Commission’s examination staff first alerted TFA to certain of these problems in early 2010, but TFA failed to take adequate remedial steps. As a result, TFA improperly calculated advisory fees and thereby overcharged certain client accounts.

#### B. Respondent

2. TFA is a Delaware corporation based in St. Petersburg, Florida with branch offices throughout the United States. TFA is registered with the Commission as an investment adviser and a broker-dealer. TFA’s advisory business has \$3.1 billion in regulatory assets under management held in approximately 22,500 client accounts according to its Form ADV filed in November 2013.

#### C. Facts

3. TFA, through its investment adviser representatives (“IARs”), offers retail clients several investment programs. These programs assist clients in allocating their assets among various investment products and offer differing management tools, research, and fees. Some programs, including the TFA Advantage Account Program (“Advantage Program”), TFA Capital Account Program (“Capital Program”), and TFA Sterling Advisory Account Program (“Sterling Program”), charge clients advisory fees that are assessed based on the amount of assets each client holds in their accounts. As of June 30, 2013, TFA had approximately 15,000 accounts in the

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<sup>1</sup> 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.

Advantage Program, Capital Program, and Sterling Program with a total balance of approximately \$2.5 billion.

4. The total advisory fees for the Advantage Program, Capital Program, and Sterling Program have an administrative fee component. The administrative fee is an annual percentage of the assets under management in the clients' accounts. During the relevant period, TFA offered reductions or "breakpoints" in the administrative fee TFA charged to clients in its Advantage Program, Capital Program, and Sterling Program as their assets increased. The total advisory fee was negotiated by the IAR and the client and TFA's policies prohibited the total advisory fee, including the administrative fee, from exceeding 2.5%.

5. During the relevant period, TFA also offered Advantage Program, Capital Program, and Sterling Program clients the opportunity to aggregate certain related account balances for purposes of achieving the advisory fee breakpoints. For instance, TFA permitted clients in these programs to aggregate accounts held by "their spouses, domestic partners (as recognized by applicable state law), and children under the age of 21, whom reside with the clients."

6. TFA informed Capital Program and Sterling Program clients in certain account opening documents about the opportunity to aggregate certain account balances to qualify for a breakpoint discount in the advisory fee. For example, Capital Program and Sterling Program forms stated that aggregation allows the client "to pool the assets in all linked accounts for determining advisory fees." Beginning in May 2010, TFA stated in its Form ADV Part 2, which was made available to its clients, that Capital Program and Sterling Program clients had "the opportunity to aggregate account balances in related Program accounts . . . to allow account linkage for purposes of potential advisory fee reductions." Similarly, TFA had an internal policy of offering Advantage Program clients the opportunity to aggregate related account balances to qualify for breakpoint reductions.

7. To aggregate accounts, TFA required its clients to complete paperwork to request aggregation and identify the relevant accounts to be aggregated. TFA's procedures required that its IARs transmit the completed paperwork to the firm's headquarters in Florida. Employees at the firm's headquarters reviewed the paperwork and manually input the information into the billing system.

8. In 2009, the Commission's staff conducted an examination of a TFA branch office and in 2010 notified TFA that, among other things, it had not properly aggregated certain client accounts in the branch office. The examination staff identified several Capital Program clients in the branch office who had requested aggregation of related accounts, but did not receive breakpoint discounts. TFA represented to the Commission's examination staff that the aggregation failure occurred because of a miscommunication. According to TFA, the staff of that particular branch office mistakenly believed that TFA's headquarters was automatically aggregating the accounts without the direction of the IARs. As a result, the branch office failed to notify the appropriate staff at TFA's headquarters which accounts should be aggregated or whether certain clients had requested account aggregation.

9. The examination staff noted that TFA may not be aggregating accounts on a systematic basis and recommended that TFA review all investment advisory accounts for all branches to ensure that TFA was properly applying breakpoint discounts. Although TFA provided refunds to clients in the particular branch office under examination, and despite the examination staff's recommendation, TFA did not undertake a review of all of its branches.

10. As a result of the 2009 examination, TFA took several steps to notify both its clients and IARs of the existence and mechanics of the account aggregation process for the purpose of fee breakpoints. First, TFA issued a firm-wide compliance alert in June 2010 reminding its IARs to inform clients of the benefits of aggregation and the possible advisory fee reductions. The alert also stated that the IAR was responsible for notifying TFA headquarters if the client wished to aggregate its account balances. Second, TFA modified its account opening documentation for the Capital Program and Sterling Program to more clearly document whether a client wished to aggregate related accounts. If a client declined to aggregate, TFA required the client to write the reasons for the non-aggregation on the form. Third, TFA modified its policies and procedures to require its IARs to confirm that non-aggregating clients had provided written explanations for any non-aggregation. The firm also modified its policies and procedures to state that if a client selects aggregation, the IAR was "*required* to reduce the advisory fees through the advisory fee reduction schedule." (Emphasis added.) Fourth, TFA committed to including a one-time mailing insert in its quarterly statements to apprise its clients of its account aggregation policy and the need for clients to notify their IARs of accounts that should be aggregated.

11. TFA also added disclosures to its Form ADV Part 2 filed on May 28, 2010, indicating that Capital Program and Sterling Program clients may aggregate account balances in related accounts to receive potential fee reductions. TFA reiterated the availability of this discount in its Forms ADV Part 2 filed on June 15, 2011, January 13, 2012, and May 31, 2012.

12. In February 2012, the Commission's staff conducted a subsequent firm-wide examination of TFA and found that in certain instances the aggregation issues identified in the previous branch office examination existed nationwide and were ongoing. Most significantly, the staff found that, despite its new account opening documentation created in response to the staff's 2009 branch office examination, TFA was still failing to aggregate certain accounts for clients in the Capital Program and was similarly failing to aggregate the related accounts of certain clients in the Sterling Program. TFA also acknowledged to the Commission's staff that similar problems occurred with Advantage Program clients.

13. The failures occurred because of inadequate policies and procedures at TFA's headquarters to implement the breakpoints policy. TFA has two teams involved in establishing new accounts—the New Business Team and the Suitability Review Team—but the firm's policies and procedures did not clearly delineate which team was responsible for reviewing new account forms for account aggregation purposes. As a result, TFA did not review many new account forms for aggregation purposes and, therefore, failed in certain instances to appropriately link accounts together to apply breakpoints in the billing process.

14. The Commission's staff also discovered that while TFA had prepared the one-time mailing insert designed to apprise its clients of its aggregation policy and the need for clients to notify their IARs of accounts that should be aggregated, TFA failed to ensure that the information was disseminated to clients. Specifically, TFA's third-party mailing service, which was responsible for mailing the insert, never sent it to TFA clients.

15. Despite the 2009 branch office examination findings, TFA failed to implement policies and procedures reasonably designed to ensure that it calculated clients' fees in a manner consistent with its disclosure to clients. First, TFA's policies and procedures require that its IARs ensure that a client's reasons for not wanting aggregation are documented. This policy addressed a significant deficiency at TFA in light of the aggregation issues identified by the Commission examination staff in 2009. However, many Capital Program and Sterling Program account forms prepared subsequent to the 2009 branch office examination did not include an explanation as to why particular clients with multiple accounts had chosen not to aggregate their accounts.

16. Second, TFA failed to adopt and implement adequate policies and procedures reasonably designed to ensure that its IARs reduced advisory fees when clients opted to aggregate accounts in the Advantage Program, Capital Program, and Sterling Program as required by the firm beginning in June 2010. TFA issued a firm-wide compliance alert to its IARs in June 2010 notifying them that if a client selected aggregation, the IAR was required to reduce the total fees through the advisory fee schedule. Nevertheless, even after June 2010, some clients in the three programs had requested aggregation, but did not receive the discounts because the IAR set the total advisory fees at each breakpoint in a manner that negated the benefit from the reduction in administrative fees.

17. In addition to these failures, TFA's policies and procedures regarding the fee breakpoints were not reasonably designed in one other respect. TFA maintained two policy and procedure manuals: a Registered Investment Adviser Manual ("RIA Manual") and an Investment Adviser Representative Manual ("IAR Manual"). These manuals contained conflicting policies on the application of advisory fee breakpoints. The RIA manual stated that if a client selects aggregation, the IAR was "*required* to reduce the advisory fees through the advisory fee reduction schedule." (Emphasis added.) However, the IAR Manual appeared to give IARs discretion on whether to pass on the breakpoint fee reductions. The IAR Manual stated that the IAR "*may* reduce the advisory fees through the advisory fee reduction schedule." (Emphasis added.) Thus, the IAR Manual conflicted with both the RIA Manual and the firm's June 2010 compliance alert to its IARs, which also required that "IAR[s] reduce the advisory fees through the advisory fee schedule."

## **D. Violations**

18. As a result of the conduct described above, TFA willfully<sup>2</sup> violated Section 206(2) of the Advisers Act which prohibits an investment adviser from engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon a client or prospective client. Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act but, rather, may rest on a finding of simple 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)).

19. As a result of the representations regarding account aggregation TFA made in Part II of TFA's Forms ADV filed with the Commission in 2010, 2011, and 2012, TFA 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.<sup>3</sup>

20. TFA also willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which requires that an investment adviser adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and the rules thereunder by the adviser and its supervised persons.

## **E. Remedial Efforts**

21. Subsequent to the Commission staff's second examination and enforcement investigation, TFA initiated a firm-wide review of client accounts in the Advantage Program, Capital Program, and Sterling Program. In consultation with the Enforcement staff, TFA reviewed the records of current and former clients who may have paid excess fees and provided them with refunds and credits plus interest. TFA also sent letters notifying 22,091 clients and former clients that, in connection with an SEC regulatory examination, the firm was conducting an in-depth review of any related advisory accounts that may not have been aggregated properly for purposes of advisory fee discounts. As a result of these efforts, TFA has provided refunds and credits to 2,304 accounts of clients and former clients who were overcharged fees. The refunds and credits totaled \$553,624.32, including interest. In determining to accept the Offer, the Commission considered the remedial acts promptly undertaken by TFA and the cooperation TFA afforded the Commission staff.

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<sup>2</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)).

<sup>3</sup> Prior to October 2010, Rule 204-1(c) under the Advisers Act provided that Part II of Form ADV was considered filed with the Commission if the adviser maintained a copy in its files. *See* IA Rel. No. 3060 (August 12, 2010).

## **F. Undertakings**

Respondent has undertaken to:

22. Independent Compliance Consultant. With respect to the retention of an independent compliance consultant, TFA has agreed to the following undertakings:

a. TFA has retained the services of an independent compliance consultant (the “Independent Consultant”) that is not unacceptable to the Commission staff. The Independent Consultant’s compensation and expenses shall be borne exclusively by TFA. Prior to the retention of the Independent Consultant, TFA has provided to the staff of the Commission a copy of an engagement letter detailing the Independent Consultant’s responsibilities, which includes the reviews to be made by the Independent Consultant as described in this Order.

b. TFA shall require that the Independent Consultant conduct a review of TFA’s policies and procedures required by Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, and pertaining to its account opening forms for its investment programs, advisory fee schedules, advisory fee computation methodologies, and account aggregation process for breakpoints.

c. Within thirty (30) days after the entry of this Order, the Independent Consultant shall submit a written and dated report of its findings to TFA and to the Commission staff (the “Report”). TFA shall require that each Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Independent Consultant’s recommendations for changes in or improvements to TFA’s policies and procedures and/or disclosures to clients, and a procedure for implementing the recommended changes in or improvements to TFA’s policies and procedures and/or disclosures.

d. TFA shall adopt all recommendations contained in the Report within sixty (60) days of the Report; provided, however, that within thirty (30) days after the date of the Report, TFA shall in writing advise the Independent Consultant and the Commission staff of any recommendations that TFA considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that TFA considers unduly burdensome, impractical, or inappropriate, TFA need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose.

e. As to any recommendation with respect to TFA’s policies and procedures on which TFA and the Independent Consultant do not agree, TFA and the Independent Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by TFA and the Independent Consultant, TFA shall

require that the Independent Consultant inform TFA and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that TFA considers to be unduly burdensome, impractical, or inappropriate. TFA shall abide by the determinations of the Independent Consultant and, within thirty (30) days after final agreement between TFA and the Independent Consultant or final determination by the Independent Consultant, whichever occurs first, TFA shall adopt and implement all of the recommendations that the Independent Consultant deems appropriate.

f. Within thirty (30) days of TFA's adoption of all of the recommendations in the Report that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, TFA shall certify in writing to the Independent Consultant and the Commission staff that TFA has adopted and implemented all of the Independent Consultant's recommendations in the Report. Thereafter, beginning one hundred eighty days (180) after the entry of this Order, the Independent Consultant shall conduct such review as it deems appropriate to verify that TFA has appropriately implemented the recommendations in the Report. Prior to two hundred and ten (210) days after the entry of this Order, the Independent Consultant shall confirm to the Commission staff that TFA has adopted and implemented all of the Independent Consultant's recommendations in the Report. Unless otherwise directed by the Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff shall be sent to Chad Alan Earnst, Assistant Regional Director, Asset Management Unit, Miami Regional Office, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, Florida 33131, or such other address as the Commission staff may provide.

g. TFA shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of its files, books, records, and personnel as are reasonably requested by the Independent Consultant for review.

h. To ensure the independence of the Independent Consultant, TFA: (1) shall not have the authority to terminate the Independent Consultant or substitute another independent compliance consultant for the initial Independent Consultant without the prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

i. TFA shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with TFA, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which the Independent Consultant is affiliated or of which the Independent Consultant is a member, and any person engaged to assist



the Independent Consultant in the performance of the Independent Consultant's duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with TFA, 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 (2) years after the engagement.

23. Recordkeeping. TFA shall preserve for a period of not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any record of its compliance with the undertakings set forth herein.

24. Notice to Advisory Clients. Within ten (10) days of the entry of this Order, TFA shall post prominently on its principal website a summary of this Order in a form and location acceptable to the Commission staff, with a hyperlink to the entire Order. TFA shall maintain the posting and hyperlink on TFA's website for a period of twelve (12) months from the entry of this Order. Within thirty (30) days of the entry of this Order, TFA shall send a letter in a form acceptable to the Commission staff to all current Advantage Program, Capital Program, and Sterling Program clients notifying them of the entry of this Order via mail, e-mail, or such other method. If sent electronically, the letter shall contain a hyperlink to the Order and, if sent by mail, the Order shall be attached. Furthermore, for a period of twelve (12) months from the entry of this Order, to the extent that TFA is required to deliver a brochure to a client and/or prospective client pursuant to Rule 204-3 of the Advisers Act, the brochure shall provide notice of the entry of this Order, contain a URL where the Order can be viewed, and provide the client or prospective client the opportunity to request a copy of the Order. Within fourteen (14) days of such a request, TFA shall deliver a copy of the Order to the client or prospective client.

25. Deadlines. For good cause shown, the Commission 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.

26. Certifications of Compliance by Respondents. TFA shall certify, in writing, compliance with its 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 TFA agrees to provide such evidence. The certification and supporting material shall be submitted to Chad Alan Earnst, Assistant Regional Director, Asset Management Unit, Miami Regional Office, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, Florida 33131, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division 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 15(b) and 21C of the Exchange Act, Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. TFA cease and desist from committing or causing any violations and any future violations of Sections 206(2), 206(4), and 207 of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. TFA is censured.

C. TFA shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$553,624 to the Securities and Exchange Commission. The Commission is not ordering TFA to pay disgorgement due to the full reimbursement that TFA provided to its clients during the Commission staff's investigation. 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 make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (2) 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 TFA 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 Chad Alan Earnst, Assistant Regional Director, Division of Enforcement, Miami Regional Office, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, Florida 33131.

D. TFA shall comply with the undertakings enumerated in Paragraphs 22 to 26 of this Order.

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, TFA 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 TFA's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, TFA 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 TFA 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.

Jill M. Peterson  
Assistant Secretary