

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4146 / July 24, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16702

In the Matter of

**DION MONEY
MANAGEMENT, LLC,**

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 Dion Money Management, LLC (“DMM” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“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 Respondent and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, 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 finds¹ that:

SUMMARY

1. This matter involves a registered investment adviser's failure to disclose to clients the terms of certain compensation arrangements whereby the adviser received payments from third parties that were calculated based on client assets invested in particular mutual funds. In filings with the Commission, the adviser disclosed the existence of the arrangements and the possibility that the arrangements could pose conflicts of interest for the adviser in the provision of investment advice to clients. However, the adviser did not describe the interplay between the different arrangements, either in its filings or otherwise to clients. The adviser thus understated the maximum payment rate under the multiple arrangements, and did not disclose the possibility of receiving payments from multiple parties based on the same client assets. By failing to disclose its conflicts of interest completely and accurately, the adviser violated Section 206(2) of the Advisers Act. The adviser also violated Section 207 of the Advisers Act by virtue of certain omissions of material facts from its Commission filings concerning the compensation arrangements.

RESPONDENT

2. **Dion Money Management, LLC** ("DMM" or "Respondent") is a Delaware limited liability company with its principal place of business in North Adams, Massachusetts. Since September 1, 2007, DMM has been registered with the Commission as an investment adviser (File No. 801-68444). In October 2012, DMM's founder and longtime principal retired. In January 2014, DMM changed its name to Atlas Private Wealth Management, LLC.

FACTS

Firm Background

3. Between approximately 2010 and 2013, DMM reported total client assets under management ranging from \$500-\$600 million, all in separately managed discretionary accounts. Historically, most of DMM's clients were retail and high net worth individuals, family businesses, or corporations.

4. Although it evolved over time, DMM's fundamental investment strategy was to recommend portfolios of mutual funds with different risk or other profiles to its clients. DMM's approach was to research and recommend mutual funds across several fund families offering a range of fund options.

5. DMM constructed more than a dozen model portfolios of mutual funds for client accounts, including balanced, growth, and income model portfolios. DMM routinely reviewed the composition of its model portfolios. Although DMM recommended its model portfolios to

¹ The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

clients based on their risk profiles and investment goals, clients could and often did elect to depart from the exact holdings in the model portfolios, and, in such instances, DMM would recommend and construct portfolios based on individualized client needs and preferences.

6. DMM's clients could select any custodian for their assets. DMM recommended two custodians, both of which were Commission-registered broker-dealers. A majority of DMM's clients chose one of these broker-dealers ("Broker A") as the custodian for their assets.

Service Agreements

7. In May 2002, DMM entered into an agreement with the adviser and administrator ("Adviser B") to a certain family of mutual funds ("Fund Family B"). Pursuant to this agreement, DMM received a quarterly payment from Adviser B based on a percentage of DMM client assets invested in certain enumerated mutual funds within Fund Family B in exchange for DMM providing recordkeeping and administration services for clients holding such investments. The agreement with Adviser B subsequently was amended several times to add or remove various mutual funds from the enumerated list and to adjust the rate of compensation. By 2005, DMM received a payment of 0.20% (or 20 basis points) of applicable client assets up to \$75 million, 0.25% (or 25 basis points) for assets of \$75-175 million, and 0.30% (or 30 basis points) for assets over \$175 million. The agreement with Adviser B was terminated in 2014.

8. In January 2006, DMM entered into an agreement with the distributor ("Distributor C") for a certain family of mutual funds ("Fund Family C") advised by Distributor C's affiliate ("Adviser C"). Pursuant to this agreement, DMM received a quarterly payment from Distributor C based on a percentage of DMM client assets invested in certain enumerated mutual funds within Fund Family C in exchange for DMM providing account maintenance services for clients holding such investments. The agreement with Distributor C subsequently was amended several times to add or remove various funds from the enumerated list. The maximum rate of compensation to DMM under the agreement with Distributor C was 0.30% (or 30 basis points) of applicable client assets. The agreement with Distributor C remains in effect.

9. In July 2007, DMM entered into a Custodial Support Services Agreement ("CSSA") with Broker A. Pursuant to the terms of the CSSA, in exchange for DMM performing certain account recordkeeping services, Broker A would compensate DMM on a quarterly basis in an amount based on a percentage of DMM client assets held in custody with Broker A that were invested in mutual funds available on Broker A's no-transaction-fee ("NTF") platform, other than the proprietary family of funds ("Fund Family A") advised by Broker A's affiliate ("Adviser A"); pursuant to the express terms of the CSSA between DMM and Broker A, DMM was not compensated for client investments in mutual funds within Fund Family A. Broker A's NTF platform carried a large selection of mutual funds across various fund families, including mutual funds within Fund Family B and Fund Family C. The rate of compensation to DMM under the CSSA with Broker A initially was 0.01% (or 1 basis point) of applicable client assets, and then, pursuant to subsequent amendments to the CSSA, rose to 0.085% (or 8.5 basis points) in 2008 and 0.095% (or 9.5 basis points) in 2011. The CSSA with Broker A remains in effect.

Disclosure of Service Agreements

10. In its Form ADV filed with the Commission, DMM made certain disclosures referring to the agreements with Broker A, Adviser B, and Distributor C (collectively, “Service Agreements”), as required by the terms thereof. However, DMM did not disclose to clients certain material terms of the Service Agreements, either in its Form ADV or otherwise.

11. DMM included the following representative provisions referring to the Service Agreements in its Form ADV, Part 2A, filed in each of 2011, 2012, and 2013:

Dion Money Management, LLC has entered into Service Agreements with some mutual funds in which clients are invested. Per these Agreements, Dion Money Management, LLC is paid a fee for providing shareholder services, such as maintaining shareholder accounts and providing personal services to clients that are shareholders of such mutual funds. Such compensation may be up to 0.30% per year of the mutual fund’s average daily net asset value of shares held by clients. . . .

The fees Dion Money Management, LLC currently receives are calculated quarterly and range up to .30% of the average daily net asset value of the respective shares held of a particular mutual fund by Dion Money Management, LLC clients.

Dion Money Management, LLC is currently receiving fees from the following mutual fund companies:

- [Adviser A]² . . .
- [Fund Family B]
- [Fund Family C]

As a result of these fees, Dion Money Management, LLC has an incentive to invest client assets in the mutual funds for which Dion Money Management, LLC receives this additional compensation. However, Dion Money Management, LLC shall maintain its fiduciary duty by only recommending mutual funds that it deems appropriate and suitable for clients. . . .

² In a separate paragraph of its Form ADV, Part 2A, filed in 2012 (but not before then or again until 2015), DMM referenced the 0.095% rate of payment from Broker A but did not indicate whether or how this payment was related to the payments under the other Service Agreements. Beginning in its Form ADV, Part 2A, filed in 2014, DMM stated that it received compensation based on non-Fund Family A mutual funds available on Broker A’s NTF platform.

12. DMM's statement that the maximum rate of compensation that DMM could receive under the Service Agreements was "up to 0.30%" (or 30 basis points) of applicable client assets was not complete. DMM did not disclose that, in certain instances, DMM could – and did – receive payments at a rate greater than 0.30% based on the same client assets. DMM also did not disclose that, in certain instances, DMM could – and did – receive payments based on the same client assets from Broker A (pursuant to the CSSA) as well as either Adviser B or Distributor C (pursuant to DMM's agreements with those entities).

13. For example, for a client investment in a mutual fund within Fund Family C that was available on Broker A's NTF platform and held in custody at Broker A, DMM would receive a 30 basis point payment from Distributor C and an additional payment of up to 9.5 basis points (depending on the time period) from Broker A, for a total payment based on the same asset of up to 39.5 basis points.

14. DMM did not disclose to clients, in its Form ADV or otherwise, either the possibility of payments from multiple sources based on the same client assets, or the aggregate possible rate of such payments, both of which were material pieces of information.

15. Moreover, to different degrees over different time periods, DMM incorporated mutual funds from within Fund Family B and Fund Family C, including mutual funds as to which DMM received payments under the Service Agreements, in the model portfolios it recommended to clients.

16. Through 2011 and 2012, approximately 50-55% of DMM's total client assets were invested in mutual funds within Fund Family B and Fund Family C combined – and the vast majority of that in mutual funds of Fund Family C, which alone comprised approximately 40-45% of DMM's total client assets during this period. The combined percentages steadily and significantly declined to below 25% in 2013 and below 15% in 2014.

17. In light of the fact that Fund Family B and Fund Family C were among the mutual fund families that DMM recommended to its clients, and given the concentration of DMM client assets in mutual funds within Fund Family B and Fund Family C prior to 2013, DMM was at least negligent in failing to make complete and accurate disclosures to clients about the compensation terms of the Service Agreements and the potential conflicts of interest arising from the Service Agreements.

Statements in Form ADV

18. Respondent was required to file and did file Form ADV annual amendments with the Commission.

19. In its Form ADV, Part 2A, filed in 2011 and 2013, Respondent omitted material information about certain compensation terms under the Service Agreements.

20. Specifically, DMM's Form ADV, Part 2A, filed in 2011 and 2013 did not disclose the rate of compensation under the CSSA with Broker A.

VIOLATIONS

21. Based on the conduct described above, Respondent willfully violated³ 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 upon any client or prospective client.

22. Based on the conduct described above, Respondent willfully violated Section 207 of the Advisers Act, which makes it unlawful for any person to make any untrue statement of a material fact or omit any material fact in any report filed with the Commission.

UNDERTAKINGS

Respondent has undertaken the following:

23. Additional Disclosures in Form ADV. Respondent shall amend certain provisions of its current Form ADV, Part 2A, to make additional disclosures not unacceptable to the Commission staff concerning the Service Agreements or other matters alleged in this Order.

24. Notice to Advisory Clients. Within thirty (30) days of the entry of this Order, Respondent shall provide a copy of this Order to its advisory clients as of the date of the entry of this Order by mail, electronic mail, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

25. Certification of Compliance. Respondent shall certify, in writing, its 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 Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Robert B. Baker, Assistant Regional Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 23rd Floor, Boston, MA 02110, with a copy to the Office of Chief Counsel of the Division of Enforcement, 100 F Street, NE, Washington, DC 20549, no later than sixty (60) days from the completion of the undertakings.

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)).

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and necessary for the protection of investors 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 shall cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 207 of the Advisers Act.

B. Respondent shall be and hereby is censured.

C. Respondent shall, within fourteen (14) days of the entry of this Order, pay a civil money penalty in the amount of \$50,000 to the Securities and Exchange Commission. 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 Respondent by name as the Respondent in these proceedings, and the file number of these proceedings; and a copy of the cover letter and check or money order must be sent to Robert B. Baker, Assistant Regional Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 23rd Floor, Boston, MA 02110.

D. Such civil money penalty may be distributed pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended ("Fair Fund distribution"). Regardless of whether any such Fair Fund distribution is made, 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, Respondent shall not argue that Respondent is entitled to, nor shall Respondent 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 Respondent 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, "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 of the Order.

V.

It is further ORDERED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Brent J. Fields
Secretary