

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4456 / July 18, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17349

In the Matter of

**WASHINGTON WEALTH
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 Washington Wealth Management, LLC (“WWM” 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 Respondent 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 finds¹ that:

SUMMARY

1. This matter involves a registered investment adviser's failure to disclose to clients that it received from a newly-engaged broker-dealer and registered investment adviser ("Broker-Dealer") more than \$1.8 million in loans, of which more than \$1.1 million was intended to be forgivable over a five-year period. For nearly a year, the adviser did not disclose to clients its receipt of the loans from the new Broker-Dealer. The adviser thus failed to timely disclose its receipt of potential revenue from a third party whom the adviser had engaged to provide services to its clients. By failing to timely 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 omissions of material facts from its Commission filings concerning its relationship with the Broker-Dealer.

RESPONDENT

2. **Washington Wealth Management, LLC** ("WWM" or "Respondent") is a Delaware limited liability company with its principal place of business in San Diego, California. Since November, 2010, WWM has been registered with the Commission as an investment adviser (File No. 801-71936). WWM is currently a majority-owned subsidiary of NFP Advisor Services, Holdings D, Inc., whose affiliate NFP Corp. ("NFP") acquired WWM in March 2014.² Both the initial failure to disclose the loans and the subsequent disclosure of the loans occurred before NFP acquired WWM.

FACTS

Firm Background

3. WWM provides investment advisory, financial planning, and consulting services to its clients. During the relevant period, WWM's purported structure was a hybrid platform, comprised of independent Investment Advisor Representatives ("IAR"), non-affiliated broker-dealers, and multi-custodian offerings. Clients could choose discretionary and/or non-discretionary investment advisory services on a fee basis. WWM has offices across the country and during the relevant period managed total client assets of approximately \$700 million.

4. In September 2012, WWM entered into an agreement with the Broker-Dealer for the Broker-Dealer to provide clearing, custody, and other services for WWM's clients. Pursuant to this agreement, the Broker-Dealer provided execution of trades, custody of assets, and reporting services for WWM's clients, and WWM offered advisory programs sponsored by the Broker-Dealer.

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.

² In April 2016, WWM changed its name to Kestra Private Wealth Services, LLC, and NFP Advisor Services Holdings D, Inc. changed its name to Kestra Financial, Inc.

Loans to WWM

5. In connection with its agreement to become WWM's broker-dealer and to provide execution, custody and reporting services to WWM's clients, the Broker-Dealer made two potentially forgivable loans to WWM in the amounts of \$1,064,000 on October 18, 2012 and \$66,174 on December 7, 2012. In addition, the Broker-Dealer made two other loans to WWM in the amounts of \$485,273 on November 14, 2012 and \$277,548 on March 5, 2013 (collectively, the "Loans"). The Loans were used to cover operational costs, including costs associated with transitioning its business from its prior broker-dealer to the Broker-Dealer.

6. Under their terms, the forgivable loans were to be forgiven over a five-year period on a straight-line basis, in the amount of \$226,034.80 plus interest, per year on the anniversary date of the agreement, so long as WWM's relationship with Broker-Dealer continued and WWM maintained certain asset levels on Broker-Dealer custodial platforms. The other two loans were interest free for six months and then bore an interest rate of 4.25% until their maturity dates approximately three years after the loans were made. Because these Loans required WWM to use services provided by Broker-Dealer and to maintain assets with Broker-Dealer in order to obtain loan forgiveness, they presented a conflict of interest for WWM.

Failure to Disclose the Loans

7. WWM was required to file and did file Form ADV annual amendments with the Commission.

8. WWM disclosed its relationship with the Broker-Dealer and other loans it had received in its Form ADV, Part 2A – starting with the October 30, 2012 brochure³ and repeated in a March 8, 2013 brochure. However, these disclosures did not address WWM's receipt of the Loans from the Broker-Dealer. Instead, WWM disclosed that WWM generally recommended that one of four brokers, including the Broker-Dealer, serve as the broker-dealer/custodian for client asset management, that certain of WWM's IARs were also IARs of the Broker-Dealer, and that WWM had received a non-forgivable loan from another broker-dealer to assist its business operations and that loan created a conflict of interest because WWM "receives an economic benefit" in recommending clients use that broker-dealer.

9. WWM did not disclose the existence, nature, or magnitude of the Loans from the Broker-Dealer to its clients, either in its Form ADV filed with the Commission or otherwise, until October 16, 2013, almost a full year after it first received a forgivable loan from the Broker-Dealer.

10. In 2013 the Commission's Office of Compliance Inspections and Examinations ("OCIE") conducted an examination of WWM and informed WWM in July 2013 of its failure to disclose the Loans with the Broker-Dealer.

11. In response to OCIE, WWM added language to its Form ADV Part 2A brochure dated October 16, 2013 that disclosed the Loans; however, at the end of 2013, in anticipation of its

³ The October 30, 2012 brochure is dated October 1, 2012, but was not filed with the Commission until October 30, 2012, after WWM had accepted the first of the Loans.

acquisition by NFP, WWM terminated its relationship with the Broker-Dealer and repaid all of the Loans, including the forgivable loans.

VIOLATIONS

12. Based on the conduct described above, WWM willfully violated⁴ 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.

13. 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.

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, 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 for transfer to the general fund of United States Treasury in accordance with 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

⁴ 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)).

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 Jeremy Pendrey, Assistant Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

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, 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.

By the Commission.

Brent J. Fields
Secretary