

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 4526 / September 8, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17532**

**In the Matter of**

**ROBERT W. BAIRD & CO.**  
**INCORPORATED,**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), against Robert W. Baird & Co. Incorporated (“Baird” 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 Cease-and-Desist Proceedings Pursuant to Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing 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. This matter arises from Baird's failure to adopt and implement adequate policies and procedures to track and disclose trading away practices by certain of the subadvisors participating in Baird's wrap fee programs. Baird, in its advisory capacity, offers its advisory clients the opportunity to invest in separately managed wrap fee programs. Through these programs, Baird's advisory clients pay an annual fee in exchange for receiving access to select subadvisors and trading strategies, advice from Baird's financial advisors, and trade execution services through Baird at no additional cost. However, if a subadvisor chooses not to direct the execution of particular equity trades through Baird and the executing broker charges a commission or fee, Baird's advisory clients often are charged additional commissions or fees for those transactions. This practice is referred to as "trading away" and these types of trades are frequently called "trade aways." Historically, Baird did not track or monitor which subadvisors were trading away from Baird, how often those subadvisors were trading away, or the specific costs associated with those trade aways. In August 2013, Baird began collecting cost information from subadvisors who were trading away but failed to adopt or implement any policies and procedures designed to provide information to Baird's clients and financial advisors about the amount of the additional costs of trading away. Without the availability of such information, Baird's financial advisors could not separately consider the costs associated with trading away practices in conducting their initial and periodic suitability analyses for advisory clients in wrap fee programs whose funds were managed by certain subadvisors. By failing to adopt and implement such policies and procedures, Baird violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

#### **Respondent**

2. Baird, a Wisconsin corporation based in Milwaukee, is a privately-held, financial services company providing brokerage and investment advisory services to individual, corporate, and institutional investors. Baird has been registered with the Commission as a broker-dealer since 1936 and as an investment adviser since 1971.

#### **Baird's Wrap Fee Programs**

3. Among other services, Baird offers its advisory clients the opportunity to invest in several separately managed wrap fee programs sponsored by Baird. These programs include the Client Selected Managers, Recommended Managers, Referred Managers and Riverfront Managed Portfolios. Each of Baird's wrap fee programs allow Baird's clients to have their accounts managed on a discretionary basis by one or more third party investment managers acting as subadvisors.

4. Baird charges its wrap fee advisory clients a single fee for investment advisory services, trade execution services, custody and other standard brokerage services. One of the

benefits of investing in Baird's wrap fee programs is that wrap fee clients do not pay commissions to Baird when Baird acts as broker-dealer and executes the clients' trades.

### **Baird's Advisory Clients Incurred Additional Costs**

5. In addition to having discretion over investment decisions, the subadvisors participating in Baird's wrap fee programs have sole discretion in selecting which broker-dealers will execute equity trades on behalf of Baird's clients. According to the wrap fee program brochures provided to Baird's clients, the subadvisors "generally will initiate securities transactions through Baird . . . subject to the [subadvisor's] duty to achieve best execution." The subadvisory agreements require the subadvisors to maintain records "necessary to establish that the terms of [trade away] transactions are in the best interest of the Client" and make the records available to Baird upon request. To date, Baird has not requested these files.

6. When a subadvisor selects Baird as the broker-dealer to execute an equity trade, Baird's clients do not pay commissions on the trade. However, when a subadvisor selects a broker-dealer other than Baird to execute an equity trade, Baird's wrap fee clients may incur additional trading costs such as commissions and fees that are paid to the executing broker-dealer.

7. The additional costs incurred as a result of the subadvisors trading away are embedded in the price of the security on the periodic account statements that Baird provides to its clients. Baird does not otherwise inform its clients when they have incurred these additional trading away costs or provide its clients with the amount of the additional trading away costs.

8. Baird discloses in its Form ADV Part 2A Appendix 1 Wrap Fee Brochures and in client agreements that subadvisors may trade away from Baird and that clients may incur additional costs associated with those trade aways. However, prior to August 2013, Baird did not collect any information from the subadvisors about the costs associated with trading away, and, prior to April 2014, it did not collect any information from the subadvisors about the frequency with which the subadvisors traded away. Consequently, Baird did not and could not inform its financial advisors or clients about the amount of the additional trading away costs, and its financial advisors lacked information to separately take the additional costs into consideration in assessing whether use of a particular subadvisor in the wrap fee program was, and continued to be, suitable for a particular client.

9. By April 2014, Baird was collecting information from the subadvisors regarding both the costs associated with and frequency of the subadvisors' trading away practices. In doing so, Baird found that a number of subadvisors placed nearly all client trades with broker-dealer firms other than Baird for execution, including some subadvisors who traded away more than 90% of the time while incurring additional trading costs.

10. Despite collecting this information, Baird has not informed its clients how much they paid in additional trading away costs, beyond the amounts paid for participation in the wrap fee program. Additionally, Baird has not informed the clients' financial advisors how much each client is paying in additional trading away costs so that the financial advisors could consider the

information when determining whether the use of a particular subadvisor was, and continued to be, suitable for a particular client.

11. By April 2014, Baird began posting trading away information on its public website regarding the trading practices of the subadvisors (the “Disclosure Statement”). The Disclosure Statement contained the percentage of time each subadvisor traded away and the average cost associated with those trades for the prior calendar year. Baird also updated its Brochures and client agreements, directing its advisory clients to review the Disclosure Statement. The updated Brochures and agreements alerted clients that they could contact Baird or the subadvisor if they wanted specific information about additional costs they may be incurring as a result of trade aways.

12. Prior to September 2015, Baird did not adopt or implement written policies or procedures designed to review information received from the subadvisors in wrap fee programs regarding their trading away practices or provide cost and frequency information regarding subadvisors’ trading away practices to Baird’s clients or financial advisors. Without adequate policies or procedures, Baird did not inform its clients or their financial advisors what additional costs individual clients actually paid for trade aways, beyond the amounts clients paid for participation in the wrap fee program. In addition, the financial advisors did not separately consider additional transaction costs and fees when assessing whether use of a particular subadvisor in the wrap fee programs was, and continued to be, suitable for a particular client.

### **Violation**

13. As a result of the conduct described above, Baird violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

### **Baird’s Remedial Efforts**

14. In determining to accept the Offer, the Commission considered both the voluntary remedial acts promptly undertaken by Respondent and its cooperation with the Commission staff. Respondent has taken the following steps to strengthen its compliance function. Respondent has: (1) updated and expanded its disclosures in its Brochures regarding subadvisors’ practices of trading away from Baird; (2) added disclosures to its applicable client agreements regarding subadvisors’ practices of trading away from Baird; (3) created and updated an annual Disclosure Statement that it makes available on its website regarding the trading away practices of certain subadvisors participating in its wrap fee programs; (4) delivered the annual Disclosure Statement to clients along with the Brochures when clients open a new wrap fee account; and (5) added questions to its initial and annual subadvisor questionnaire that it sends to subadvisors in the Recommended Managers wrap fee program to obtain more detailed information about the execution policies and trading away practices of the subadvisors. The Commission also considered the Undertakings described below.

15. Baird also is in the process of amending its policies and procedures to require the review of information received from subadvisors in wrap fee programs regarding their trading away policies and practices, and expects to be able to provide trading away information to its advisory clients and financial advisors on an account-by-account and trade-by-trade basis by January 2017.

### **Undertakings**

16. Respondent has undertaken to:

- a. Add a footnote on client statements for wrap accounts managed by subadvisors informing the clients that, during the prior calendar year, their subadvisor placed equity trades away from Baird on which the executing broker charged a commission that was embedded in the price of the trade. The footnote will describe the frequency with which the subadvisor traded away during the prior calendar year. Baird will keep this disclosure on the account statements until January 1, 2017, or the initiation of the commission report (described below), whichever is later.
- b. Distribute, at least annually, a report to each wrap fee program client and their Baird financial advisor that shows the commissions embedded in equity trades executed away from Baird by the subadvisor, unless and until such information becomes available to advisory clients and financial advisors through other means.
- c. Review and, as necessary, update its policies and procedures regarding (1) the annual disclosure statement, (2) the quarterly or annual commission report, and (3) its review of information received from subadvisors in the Recommended Managers wrap fee program regarding their trading away policies and practices.
- d. Develop and conduct training for its financial advisors regarding how to understand and analyze wrap fee program subadvisors' trading away practices and embedded commissions, and the appropriate consideration of such information in assessing whether use of a particular subadvisor in the wrap fee program was, and continued to be, suitable for a particular client.

In determining whether to accept the Offer, the Commission has considered these undertakings.

### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 203(k) of the Advisers Act, Respondent cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$250,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Securities Exchange Act of 1934 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  
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 Robert W. Baird & Co. Incorporated 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 Anne C. McKinley, Division of Enforcement, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 900, Chicago, IL 60604.

C. 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, 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 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 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 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