

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 80177 / March 8, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4661 / March 8, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17870

In the Matter of

**VOYA FINANCIAL
ADVISORS, INC.,**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 15(b) 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 Section 15(b) 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 Voya Financial Advisors, Inc. (“VFA” 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 Section 15(b) 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 finds¹ that

Summary

This matter involves a registered investment adviser’s failure to disclose to its clients compensation it received through an arrangement with a third party broker-dealer (“Clearing Broker”) and conflicts arising from that compensation. In the arrangement, the Clearing Broker agreed to share with VFA certain revenues that the Clearing Broker received from the mutual funds in the Clearing Broker’s no-transaction-fee mutual fund program (“NTF Program”). In a separate agreement, the Clearing Broker agreed to pay VFA a certain percentage of service fees that the Clearing Broker received from the mutual funds in exchange for VFA performing certain administrative services. These payments created a conflict of interest in that they provided a financial incentive for VFA to favor the mutual funds in the NTF Program over other investments when giving investment advice to its advisory clients. VFA did not disclose this arrangement or the resulting conflict in its disclosures to its advisory clients, violating Sections 206(2) and 207 of the Advisers Act. In addition, by not adequately implementing policies and procedures reasonably designed to ensure proper disclosure of conflicts of interest, VFA violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondent

1. **Voya Financial Advisors, Inc.** is a Minnesota corporation with its principal place of business in Des Moines, Iowa. Prior to September 1, 2014, VFA was known as ING Financial Partners, Inc. VFA has been registered with the Commission as an investment adviser (File No. 801-46585) since July 11, 1994, and as a broker-dealer (File No. 8-13987) since July 17, 1968. Voya Financial, Inc. (NYSE: VOYA), a publicly traded company, is the sole shareholder of Voya Holdings, Inc., which owns 100% of VFA.

Background

2. VFA provides investment advisory services, financial planning, and consulting services to individuals, pension and profit sharing plans, charitable organizations, corporations and

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.

other businesses. Its investment advisory services are offered to clients on both a non-discretionary and discretionary basis.

3. Since at least 1998, VFA has retained the Clearing Broker to provide clearing and custody services for most of VFA's advisory clients. The Clearing Broker provides execution of trades, custody of assets, and reporting services. VFA disclosed its relationship with the Clearing Broker in its filings with the Commission and in other disclosures to advisory clients.

Mutual Fund Service and Administrative Service Fee Revenue Stream to VFA

4. During the relevant period, the Clearing Broker offered its NTF Program to investment advisers. As part of the program, the Clearing Broker waived, for clients of participating advisers, the transaction fees it would otherwise charge for purchases of funds. The NTF Program had two sub-programs, NTF A and NTF B. NTF A consisted of no-load mutual funds whereas NTF B was comprised of load mutual funds whose loads were waived if they were purchased in fee-based advisory accounts.

5. Since at least 2006, VFA has participated in the NTF Program. The terms of VFA's participation were set forth in the Addendum to the Fully Disclosed Clearing Agreement ("Addendum") with the Clearing Broker. Under the Addendum, the Clearing Broker agreed to share with VFA a certain percentage of revenues the Clearing Broker received from the mutual funds on the NTF A Program. The Addendum has been amended since 2006 to increase the percentage of the revenues the Clearing Broker would share with VFA.

6. Separately, in April 2014, VFA entered into an Administrative Services Fee Agreement ("ASA") with the Clearing Broker in which VFA agreed to provide certain administrative services to the Clearing Broker such as handling client inquiries, maintaining client accounts and trade correction processing. In exchange, the Clearing Broker agreed to pay a certain percentage of service fees it received from the NTF B mutual funds once VFA client assets invested in such funds exceeded a pre-determined threshold.

VFA Failed To Disclose That It Received Mutual Fund Service and Administrative Service Fees From The Clearing Broker

7. VFA was required to file and did file Form ADV annual amendments with the Commission. Item 13.A of former Form ADV, Part II and Item 14.A of current Form ADV, Part 2A require advisers to disclose compensation received from third parties in connection with providing investment advisory services to clients.²

² The Form ADV was amended in 2010, requiring most Commission-registered advisers to file and start using client disclosure brochures that met the requirements of new Part 2A early in

8. In its Forms ADV, Part II and Part 2A brochures filed with the Commission from 2006 to the present, VFA disclosed its relationship with the Clearing Broker and that the no-transaction-fee feature of the NTF Program may present its investment adviser representatives with an incentive to recommend mutual funds in the NTF Program. However, VFA did not disclose that it received payments from the Clearing Broker based on VFA client assets invested in the NTF Program mutual funds or that these payments presented an additional conflict of interest. Nor did VFA's advisory agreements with its clients contain such disclosures.

9. VFA also did not disclose to its advisory clients the administrative services fee payments it began receiving as a result of the ASA it entered into in April 2014 even though it represented in the ASA that it had done so.

10. During the relevant period, VFA had a policy and procedure of disclosing all material conflicts of interest, including the potential for VFA and its investment adviser representatives to earn compensation in addition to advisory fees but did not adequately implement this policy and procedure.

11. In December 2016, VFA amended the Addendum with the Clearing Broker regarding the NTF Program and terminated the ASA. In the amended arrangement, the Clearing Broker agreed to pay VFA a percentage fee on all assets of VFA customers above a certain threshold custodied at the Clearing Broker. In addition, the Clearing Broker pays VFA a per account fee for each customer account of VFA held at the Clearing Broker. These fees are in lieu of the fees previously received by VFA from the Clearing Broker under the Addendum and ASA.

Violations

12. Section 206(2) of the Advisers Act prohibits investment advisers from directly or indirectly engaging "in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." A violation of Section 206(2) of the Advisers Act may rest on a finding of simple negligence. See *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)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.* As a result of the conduct described above, VFA willfully violated Section 206(2) of the Advisers Act.³

13. Section 206(4) of the Advisers Act makes it "unlawful for any investment adviser . . . to engage in any act, practice, or course of business which is fraudulent, deceptive, or

2011. See Amendments to Form ADV, Release No. IA-3060 (July 28, 2010), <http://www.sec.gov/rules/final/2010/ia-3060.pdf>.

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 *Gerhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

manipulative.” Rule 206(4)-7 under the Advisers Act requires registered investment advisers to, among other things, “[a]dopt and implement written policies and procedures, reasonably designed to prevent violation” of the Advisers Act and its rules. A violation of Section 206(4) and the rules thereunder do not require scienter. *Steadman*, 967 F.2d at 647. As a result of the conduct described above, VFA willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

14. Section 207 of the Advisers Act makes it unlawful for any person to make any untrue statement of a material fact in any registration application or report filed with the Commission, or to omit to state in any such application or report any material fact which is required to be stated therein. As a result of the conduct described above, VFA willfully violated Section 207 of the Advisers Act.

Undertakings

Respondent has undertaken to:

15. Notice to Advisory Clients. Within forty-five (45) days of the entry of this Order, VFA shall provide a copy of the Order to each of VFA’s existing advisory clients via mail, email, or such other method as may be acceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff. VFA will also comply with all disclosure obligations under the Advisers Act concerning this Order, including providing a notification of this Order in the Item 2 “Material Changes Since Last Annual Update” section of any brochure required under Rule 204-3.

16. Certification of Compliance. VFA 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 VFA agrees to provide such evidence. The certification and supporting material shall be submitted to Jeremy Pendrey, Assistant Regional Director, Asset Management Unit, Division of Enforcement, with a copy to the Office of Chief Counsel of the Division of Enforcement, no later than sixty (60) days from 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 VFA’s Offer.

Accordingly, pursuant to Sections 15(b)(4) of the Exchange Act and 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), 206(4) and 207 of the Advisers Act and Rule 206(4)-7 thereunder.

B. Respondent is censured.

C. Respondent shall, within fourteen (14) days of the entry of this Order, pay disgorgement of \$2,621,324 and prejudgment interest of \$174,629.78 and a civil money penalty in the amount of \$300,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and/or 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 Voya Financial Advisors, Inc. 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 Jeremy Pendrey, Assistant Regional 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, 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.

E. Respondent shall comply with the undertakings enumerated in Section III above.

By the Commission.

Brent J. Fields
Secretary