UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4695 / May 1, 2017

INVESTMENT COMPANY ACT OF 1940
Release No. 32621 / May 1, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17960

In the Matter of **WILLIAM BLAIR & COMPANY, L.L.C.,** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AND SECTION 9(f) OF THE INVESTMENT COMPANY 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") and Section 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against William Blair & Company, L.L.C. ("William Blair" 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 and Section 9(f) of the Investment Company 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. From 2010 until 2014, as a result of erroneous payments, William Blair negligently used mutual fund assets to pay for (i) distribution and marketing of fund shares outside of a written, board-approved Rule 12b-1 plan and (ii) sub-transfer agent ("sub-TA") services in excess of board-approved limits. These payments totaled approximately $1.25 million and rendered certain of William Blair Funds' ("Funds") disclosures concerning payments for distribution and sub-TA services inaccurate. As a result of this conduct, William Blair violated Section 206(2) of the Advisers Act and Section 34(b) of the Investment Company Act, and caused the Funds to violate Section 12(b) of the Investment Company Act and Rule 12b-1 thereunder. William Blair also failed to fully disclose to the Funds' Board of Trustees ("Board") that William Blair (and not a third-party service provider) would retain a fee for providing shareholder administration services to the Funds under a shareholder administration services agreement between certain of the Funds and William Blair. As a result of this conduct, William Blair violated Section 206(2) of the Advisers Act.

Respondent

2. **William Blair & Company, L.L.C.**, a Delaware limited liability company based in Chicago, Illinois, has been registered with the Commission as an investment adviser since 1947 and as a broker-dealer since 1957. At all relevant times to the facts described herein, William Blair served as the investment adviser to the Funds and its brokerage arm was a distributor of the Funds' shares.

Other Relevant Entities

3. **William Blair Funds** are organized as a Delaware statutory trust and are registered with the Commission as an open-end management investment company. The Funds are a series trust currently consisting of twenty-two funds that pursue various investment strategies and have approximately $13 billion in total assets as of December 31, 2016.

4. **Intermediary One** is dually registered with the Commission as a broker-dealer and investment adviser. Intermediary One provided distribution, marketing, and sub-TA services to the Funds.

5. **Intermediary Two** is registered with the Commission as a broker-dealer. Intermediary Two provided distribution, marketing, and sub-TA services to the Funds.

6. **Intermediary Three** is dually registered with the Commission as a broker-dealer and investment adviser. Intermediary Three provided distribution, marketing, and sub-TA services to the Funds.

7. **Intermediary Four** is dually registered with the Commission as a broker-dealer and investment adviser. Intermediary Four provided distribution, marketing, and sub-TA services to the Funds.

Erroneous Distribution Payments

8. Financial intermediaries often provide marketing and distribution services to mutual funds. Section 12(b) of the Investment Company Act and Rule 12b-1 thereunder make it unlawful for a registered open-end fund to act as distributor of securities of which it is the issuer, except as an underwriter, outside of a written 12b-1 plan approved by the fund's board or shareholders. Rule 12b-1 states that a fund acts as a distributor if it "engages directly or indirectly in financing any activity which is primarily intended to result in the sale of [fund] shares."[1] As a result, if there is no approved Rule 12b-1 plan that permits the fund's adviser to use fund assets to pay for distribution, then fund assets cannot be used to pay for such distribution. The adviser, however, may pay for those distribution services out of its own resources—a practice referred to as "revenue sharing."

9. In addition to providing distribution services, financial intermediaries often provide shareholder services that typically would otherwise be provided by the fund's transfer agent. These services are commonly referred to as "sub-TA services" and are often paid out of the fund's assets.

10. William Blair, as distributor of the Funds' shares, has entered into contracts with numerous financial intermediaries that provide both distribution and sub-TA services to the Funds. Among others, William Blair entered into the Supplement to Dealer Sales Agreement ("Supplement Agreement") with Intermediary One in June 2008. Later, in May 2010, William Blair entered into the No Transaction Fee Program Participation Agreement ("NTF Agreement") with Intermediary Two.

11. Although the agreements with Intermediary One and Intermediary Two included the provision of distribution and marketing services, William Blair inadvertently misclassified the agreements as being for sub-TA services and caused the Funds to pay for those services outside of a Rule 12b-1 plan for approximately two years, with its attendant controls and board oversight. William Blair caused $901,947 of the Funds' assets to be used to make payments to

[1] A fund's Rule 12b-1 plan must also be approved by a majority of its shareholders, if the plan is adopted after any public offering of the fund's shares.

these intermediaries for distribution and marketing services outside of a Rule 12b-1 plan. These payments were in addition to payments made to Intermediary One and Intermediary Two pursuant to the Funds' written and board-approved Rule 12b-1 plan.

Intermediary One Agreement

12. In June 2008, William Blair entered into the Supplement Agreement with Intermediary One. Under the terms of the agreement, William Blair agreed to pay Intermediary One fees in exchange for Intermediary One's "continuing due diligence, training, operations and systems support, and marketing" of the Funds. Under the Supplement Agreement, William Blair is required to pay Intermediary One the greater of (i) an annual fee of 0.13% (13 basis points), payable quarterly, on the total assets under management for any Fund or Funds held by [Intermediary One] customers or (ii) $50,000."

13. The Supplement Agreement also stated, "[Intermediary One] and [William Blair] understand and agree that the fees described in [paragraph 12] above: (a) shall be paid by [William Blair] or an affiliate of [William Blair]; and (b) shall not be paid by the Funds or out of assets of the Funds (either through directed brokerage or otherwise)."

14. From June 2008 until June 2010, William Blair paid the fee to Intermediary One pursuant to the Supplement Agreement. In 2010, William Blair modified its oversight of intermediary arrangements by transitioning from a manual oversight system to an increasingly automated system. During the transition, William Blair inadvertently misclassified the fees payable to Intermediary One as being payable by the Funds and began using the Funds' assets to pay Intermediary One pursuant to the Supplement Agreement.

15. From July 2010 through March 2013, William Blair caused the Funds to pay total fees of approximately $864,170 to Intermediary One pursuant to the Supplement Agreement. As described above, the services to be provided under the Supplement Agreement included marketing. As a result, the Funds' assets could not be used to pay for the services, unless such payments were made pursuant to a written, approved Rule 12b-1 plan, which they were not.

Intermediary Two Agreement

16. In May 2010, William Blair entered into the NTF Agreement with Intermediary Two. Intermediary Two provides clearing services to certain business entities (its "Introducing Entities"). The agreement states:

> [Intermediary Two] shall: (a) reference the Funds on the intranet site that [Intermediary Two] makes available to its Introducing Entities including, but may not be limited to, a direct link to [William Blair's] website; (b) permit [William Blair] to market special promotions and/or offerings relating to the Funds to Introducing Entities through the [Intermediary Two] marketing

team; and (c) waive all trading fees charged to Introducing Entities and/or their clients, as applicable, that relate to buying, selling, or exchanging of shares of the Funds.

17. The agreement also stated that William Blair shall pay a fee (the "Fee") to Intermediary Two equal to 0.10% (10 basis points) per annum of the net asset value of the outstanding shares for which Intermediary Two is the broker of record. The Fee is calculated quarterly at a rate of 0.025% (2.5 basis points) and payable within 60 days after the end of calendar quarter.

18. The agreement further stated that William Blair "represents that it will pay the Fee solely from the assets of [William Blair] or other affiliates of the Funds, and that the Fee will not be paid from assets of the Funds."

19. As part of William Blair's oversight transition discussed above in paragraph 14, William Blair also inadvertently misclassified the fees due to Intermediary Two as being payable by the Funds and began using the Funds' assets to pay Intermediary Two pursuant to the NTF Agreement. From April 2011 through 2013, William Blair caused the Funds to pay total fees of approximately $37,777 to Intermediary Two pursuant to the NTF Agreement. The services to be provided under the NTF Agreement included marketing. As a result, the Funds' assets could not be used to pay for the services, unless such payment was made pursuant to a written, approved Rule 12b-1 plan, which they were not.

Erroneous Sub-TA Payments

20. In addition to entering into agreements with financial intermediaries that provide for the provision of various services, including distribution services, William Blair, on behalf of the Funds, entered into agreements with intermediaries that provide for the provision of sub-TA services. The Funds' Board set a cap on the amount of fees to be paid out of Fund assets to each intermediary for sub-TA services. The cap was the higher of 15 basis points on the amount of assets maintained at the intermediary or $15 per account per year. This cap was disclosed in the Funds' prospectuses.

21. All sub-TA fees due to intermediaries are initially paid by William Blair. The Funds then reimburse William Blair either (i) the amount it paid to the intermediaries or (ii) the amount of the cap set by the Board, whichever is less.

Intermediary Three

22. In October 2008, Intermediary Three entered into an agreement with William Blair to provide the Funds sub-TA services for a fee of 0.10% of the Funds' assets maintained at Intermediary Three. In December 2010, William Blair entered into a separate agreement, under which Intermediary Three received an additional 0.15% fee for providing sub-TA services to Fund assets invested through a platform sponsored by Intermediary Three. William Blair

received and paid two separate invoices: one invoice covering the 2008 agreement and a separate invoice covering the 2010 agreement.

23. In 2014, William Blair learned that the separate invoices that Intermediary Three issued pursuant to the 2008 and 2010 agreements included fees that were calculated using the same underlying assets. As a result, from 2010 to 2014, the Funds paid more than 0.15% on certain assets maintained at Intermediary Three. In total, William Blair caused the Funds to pay $262,244 in excess of the 0.15% sub-TA cap set by the Board.

Intermediary Four

24. In August 2006, William Blair and Intermediary Four entered into an agreement whereby the Funds' shares would be made available in Intermediary Four's advisory and brokerage programs. Under the terms of the agreement, Intermediary Four agreed to provide sub-TA services for a 0.10% fee of the Funds' equity net assets and a 0.075% fee of the Funds' fixed income net assets maintained at Intermediary Four. In 2011, William Blair and Intermediary Four entered into another agreement that provided for additional sub-TA services for a fixed $12 fee per account holding a position in the Funds maintained at Intermediary Four. The $12 fee under the 2011 agreement was replaced in November 2012 with an agreement under which Intermediary Four agreed to provide sub-TA services for a fee of 0.15% of the net assets of the omnibus accounts maintained at Intermediary Four.

25. In 2014, William Blair learned that the separate invoices that Intermediary Four issued pursuant to the 2006 and 2011 or 2012 agreements included fees that were calculated using the same underlying assets. As a result, from 2011 to 2014, the Funds paid more than 0.15% on certain assets maintained at Intermediary Four. In total, William Blair caused the Funds to pay $83,306 in excess of the 0.15% sub-TA cap set by the Board.

Fund Distribution and Sub-TA Disclosures

26. The Funds' prospectuses stated that, in addition to "[12b-1] fees, fees paid pursuant to the Shareholder Administration Agreement or fees paid for sub-administration, sub-transfer agency or other services by the Fund," William Blair, out of its own resources and without additional cost to the Funds or their shareholders, provides cash payments to certain intermediaries. However, in connection with the Supplement Agreement and NTF Agreement, the Funds, and not William Blair, provided additional cash payments to Intermediary One and Intermediary Two.

27. The Funds' Statement of Additional Information ("SAI") regarding sub-TA expenses stated that "the Funds may reimburse [William Blair] . . . for fees paid to intermediaries such as banks, broker-dealers, financial advisers or other financial institutions for sub-administration, sub-transfer agency and other services provided to investors whose shares are held of record in omnibus, other group accounts, retirement plans or accounts traded through

registered securities clearing agents." The SAI further disclosed that although "the [sub-TA] fees may vary," they "generally range up to 0.15% of the assets of the class serviced or maintained by the intermediary or $15 per sub-account maintained by the intermediary." However, certain Funds paid in excess of 0.15% of their assets or $15 per account held at Intermediary Three and Intermediary Four.

28. The payments the Funds incurred as a result of William Blair's negligent conduct reduced the net asset value of the Funds by $1.25 million, in the aggregate. The impact on the affected Funds was less than one penny per share.

The Shareholder Administration Agreement

29. William Blair entered into a management agreement ("Management Agreement") with the Funds in 1999. From 1999 to 2005, the Funds had either: (i) a single institutional share class; or (ii) a multi-class structure that included two retail share classes. From 2005 to 2013, William Blair formed a number of new funds, including eleven new multi-class funds under Rule 18f-3 of the Investment Company Act.[2] Unlike the prior multi-class funds that included only retail share classes, these eleven new funds included two retail and an institutional share class.

30. Although the management fee for each fund varied, William Blair provided services to the Funds under the same Management Agreement. Among other things, the Management Agreement stated that William Blair will "manage the investment and reinvestment of the assets,…administer [the Funds'] affairs to the extent requested by and subject to supervision of the Board…[and] furnish office facilities and equipment and clerical, bookkeeping and administrative services" for the Funds. The Funds also entered into agreements with third parties, such as the Funds' transfer agent, custodian, and intermediaries, to provide various administrative services. The terms of the transfer agent and custodial agreements are the same for all Funds and share classes.

31. In addition to executing the same Management Agreement and third-party service agreements, the new Funds (those with both retail share classes and an institutional class) entered into Shareholder Administration Agreements ("SAAs") with William Blair. Pursuant to the terms of the agreements, the Funds appointed William Blair to provide certain shareholder administrative services to the retail share classes of those Funds:

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[2] Among other things, Rule 18f-3 permits open-end management companies or series trusts to issue more than one class of voting stock provided certain conditions are met, including that each share class "[s]hall have a different arrangement for shareholder services or the distribution of securities or both, and shall pay all the expenses of that arrangement." Under Rule 18f-3(a)(1)(ii), different share classes "[m]ay pay a different share of other expenses, not including advisory or custodial fees or other expenses related to the management of the company's assets, if these expenses are actually incurred in a different amount by that class, or if the class receives services of a different kind or to a different degree than other classes."

> (a) aggregating and processing, or assisting in the aggregation and processing of, purchase and redemption orders, (b) processing, or assisting in processing, confirmations concerning investor orders to purchase, redeem and exchange Fund shares, (c) receiving and transmitting, or assisting in the receipt and transmission of, funds representing the purchase price or redemption proceeds of Fund shares, (d) processing dividend payments on behalf of investors, (e) forwarding shareholder communications, such as proxies, shareholder reports, dividend and tax notices, and updating prospectuses for investors, (f) receiving, tabulating, and transmitting proxies received by investors, and (g) performing other related services that do not constitute "any activity which is primarily intended to result in the sale of shares" within the meaning of Rule 12b-1 under the Investment Company Act of 1940 or "personal and account maintenance services" within the meaning of the NASD Conduct Rules.

The SAAs also stated that William Blair "may appoint" third parties to provide the administrative services "directly to or for the benefit of investors." Each SAA was approved by the Funds' Board.

32. In exchange for providing the services under the SAAs to the retail share classes of these multi-class Funds, William Blair charged the retail share classes a shareholder administration fee computed at an annual rate of 0.15% of their average daily net assets. The SAAs also allowed William Blair to appoint various third-party firms, including broker-dealers, to perform these services for investors of the Funds. William Blair, and not the Funds, would be responsible for the payment of compensation to such firms.

33. For those Funds that had either solely retail share classes or solely an institutional share class and thus did not adopt the SAA, the services outlined in the SAA were provided by William Blair through the Management Agreement or by other third parties. For those Funds that included both retail and institutional share classes and thus adopted the SAA, William Blair provided the shareholder administrative services pursuant to the SAA.

34. When the Board approved the SAA in 2005, William Blair initially represented that "it is generally expected that these [shareholder administration] fees would not be retained by William Blair & Company, L.L.C., but would rather be passed through to the various financial intermediaries providing these administration services." This initial expectation proved to be incorrect and not followed in practice. William Blair generally provided the shareholder administration services – either directly, or indirectly by assisting third-party service providers – and retained the fees; no fees were ever paid to financial intermediaries under the SAA.

35. Subsequent to the initial adoption of the SAAs, William Blair presented information to the Board that described the shareholder administration fee as non-advisory fee revenue paid to

William Blair and quantified the fees received by William Blair under the SAA, which the Board reviewed. In addition, since 2008 the Board considered these fees as a "fall-out benefit" to the adviser. However, these materials did not indicate that William Blair retained all of the fees under the SAA.

36. William Blair's receipt of SAA fees paid by the Funds presented a conflict of interest that it was required to fully and fairly disclose to the Board.

Violations

37. Section 206(2) of the Advisers Act makes it unlawful for any investment adviser "directly or indirectly to engage 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. *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, William Blair violated Section 206(2) of the Advisers Act.

38. Section 34(b) of the Investment Company Act makes it unlawful for any person "to make any untrue statement of a material fact in any registration statement . . . filed or transmitted pursuant to [the Investment Company Act]" or "to omit to state therein any fact necessary in order to prevent the statements made therein, in light of the circumstances under which they were made, from being materially misleading." A violation of Section 34(b) of the Investment Company Act may rest on a finding of negligence. *Mohammed Riad*, Investment Company Act Release No. 32146, 2016 WL 3226836, at *27 n. 81 (June 13, 2016). Proof of scienter is not required to establish a violation of Section 34(b) of the Investment Company Act. *Id*. As a result of the conduct described above in Paragraphs 10 to 28, William Blair violated Section 34(b) of the Investment Company Act.

39. Section 12(b) of the Investment Company Act and Rule 12b-1 thereunder make it unlawful for any registered open-end investment management company to "engage[] directly or indirectly in financing any activity which is primarily intended to result in the sale of shares issued by such company," other than through an underwriter, unless such financing is made pursuant to a written plan that meets the requirements of Investment Company Act Rule 12b-1(b). As a result of the conduct described above in Paragraphs 10 to 19 and 28, William Blair, as investment adviser and broker-dealer distributor of the Funds' shares, caused the Funds to violate Section 12(b) of the Investment Company Act and Rule 12b-1 thereunder.

Remedial Measures

40. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by William Blair. In June 2013, the Commission's Office of Compliance

Inspections and Examinations staff notified William Blair that it planned to conduct an examination that included a review of payments made to financial intermediaries. At the same time, William Blair undertook an independent internal review of its intermediary arrangements and discovered the payments discussed above. After identifying the payment errors, William Blair promptly notified the Board, reimbursed the Funds with interest, and supplemented its practices of providing oversight of payments to financial intermediaries.

IV.

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

Accordingly, pursuant to Section 203(k) of the Advisers Act and Section 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent William Blair cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act, and Sections 12(b) and 34(b) of the Investment Company Act and Rule 12b-1 thereunder.

B. Respondent William Blair shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $4,500,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with 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 William Blair & Company, L.L.C. 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 Anthony S. Kelly, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

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