

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4993 / June 4, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18527

In the Matter of

DEVERE USA, INC.,

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 deVere USA, Inc. (“DVU” 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 part, 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 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. These proceedings arise out of investment adviser DVU's failure to make full and fair disclosure to clients and prospective clients of material conflicts of interest regarding compensation obtained from third-party product and service providers. DVU's clients are primarily U.S. residents or citizens who held U.K. defined benefit and defined contribution pensions. DVU provided investment advice to its clients in connection with the transfer of these U.K. pension assets to overseas retirement plans that qualified under the U.K. tax authority's regulations as a Qualifying Recognised Overseas Pension Scheme ("QROPS"). Between at least June 2013 and March 2016, DVU did not disclose arrangements in which third-party product and service providers recommended by DVU in connection with its QROPS advice compensated an overseas affiliate of DVU that, in most cases, in turn compensated the DVU investment adviser representative ("IAR") who had made the recommendations. The undisclosed compensation constituted the primary form of compensation received by DVU's IARs for their advisory services. Each of these arrangements created an economic incentive for DVU to recommend a transfer to a QROPS and/or to recommend certain product and service providers.

2. In addition, DVU IARs made statements concerning the benefits of transferring U.K. pension assets to a QROPS, including with respect to U.S. and U.K. tax treatment and the investment options that a DVU client would have in a QROPS, that were materially misleading or incomplete. In addition, DVU failed to satisfy disclosure requirements with respect to its Form ADV filings. DVU also failed to both tailor its compliance program to its actual business and to undertake many of the responsibilities laid out in its existing compliance manual.

Respondent

3. DVU has been registered with the Commission as an investment adviser (File No. 801-78041) since June 5, 2013. DVU is incorporated in the State of Florida and its principal place of business is located in New York, New York. DVU's most recent Annual Updating Amendment to Form ADV, filed on March 31, 2018, reported approximately \$500 million in assets under management.

Background

4. DVU's clients primarily are U.S. residents or citizens who held U.K.

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

defined benefit or defined contribution pensions from past employment in the U.K. Defined benefit pensions are generally “guaranteed” benefits that pay a defined amount from retirement age until death, with specified annual inflation adjustments, and with continued payment to a surviving spouse typically equal to 50% of the amount until that spouse’s death. Defined contribution pensions are generally akin to U.S. 401(k) plans in which an employee can choose from a defined set of investment options, take periodic or other withdrawals upon retirement age, and select a beneficiary who would acquire the remaining assets upon death. Individuals who hold U.K. defined benefit or defined contribution pensions generally may obtain a cash equivalent transfer value for transfer to another retirement plan.

5. Until in or around March 2017, DVU’s primary business involved recommending that its clients elect to take a cash equivalent transfer value from their U.K. defined benefit or defined contribution pensions and transfer to a QROPS for which DVU would provide ongoing investment advice on a non-discretionary basis. DVU recommended that clients use certain Malta-based QROPS trustees (the “Trustee Firms”) and certain products or services offered by third-party firms located outside the U.S. that provided custodial accounts for the QROPS in which investments would be made in securities (the “Custodian Firms”). DVU also provided ongoing investment advice to clients on the underlying securities held in the QROPS. In some instances, DVU also advised clients regarding currency conversions.

6. At times, DVU represented itself as “fee-only” in e-mail and other communications to current and prospective clients.

DVU Failed to Disclose Compensation Arrangements and Conflicts of Interest

Compensation from the Custodian Firms and the Trustee Firms

7. The Custodian Firms that DVU recommended to prospective clients had charging structures in which clients would be charged a fixed annual fee each year, certain fixed charges for each transaction in the account, and what was referred to as an “establishment fee.” The “establishment fee” for DVU clients ranged from approximately 1.0-1.1% of the pension transfer value per year for 10 years, with early cancellation penalties that guaranteed the Custodian Firms’ receipt of the full 10-11% of the transfer value—either over a 10 year period through the annual charge or in accelerated early cancellation penalties.

8. Upon a DVU client’s transfer to a QROPS, the Custodian Firms paid an amount equivalent to 7% of the transfer value to an overseas affiliate of DVU that in turn paid approximately half of that amount to the DVU IAR who recommended the pension transfer. This payment constituted the primary form of compensation received by DVU’s IARs. The Custodian Firms paid this amount out of their own assets, but their future collection of the “establishment fee” over 10 years (or fewer) of approximately 10-11% of the transfer value was the basis for such payment. DVU clients were aware of the Custodian Firms’ charges, including the “establishment fee.” However, despite knowing of the 7% upfront compensation arrangement and the fact that half of such compensation was paid to its IARs, DVU did not

disclose the arrangement or payments, or the material conflict of interest that they created, to its clients or prospective clients.

9. The Custodian Firms also had arrangements with an overseas affiliate of DVU under which bonus payments would be made if certain annual business targets were met, inclusive of DVU's QROPS business. DVU clients were aware of the fees that they paid to the Custodian Firms, but the bonus payment arrangements were not disclosed to DVU's clients and prospective clients.

10. The Trustee Firms that DVU recommended charged a fixed initial fee and a fixed annual fee to DVU clients. The Trustee Firms had compensation arrangements under which they agreed to pay certain "introduction" and annual fees to an overseas affiliate of DVU, including with respect to DVU clients who established and maintained a QROPS with the Trustee Firms. DVU clients were aware of the fees that they paid to the Trustee Firms, but the compensation arrangements were not disclosed to DVU's clients and prospective clients.

Compensation from Funds and Structured Note Investments

11. From early 2013 through at least the fall of 2014, DVU recommended that QROPS clients invest primarily in certain European multi-asset funds and certain structured notes that charged an entry fee of up to 4 or 5%. DVU waived this fee for some clients and not for others. When DVU did not waive the fee, it was paid to an overseas affiliate that in turn paid approximately half of the amount to the DVU IAR who recommended the investment. While schedules and dealing instructions disclosed to clients that the client would pay the entry fee specified, DVU knew but did not disclose that its IARs had an economic interest in such compensation and that it constituted a conflict of interest.

Compensation from Foreign Exchange Provider

12. DVU recommended that certain clients convert all or a portion of their U.K. pension cash equivalent transfer value, which was in British Pounds, to U.S. Dollars or Euros when transferring it to a QROPS. The foreign exchange provider used to make such a conversion, which was an overseas affiliate of DVU, generally charged a fee equal to 1% of the amount of currency exchanged. The provider had an arrangement to pay a portion of its fee to the DVU IAR making the recommendation. Despite knowing this, DVU did not disclose to its clients the fee or the compensation paid to its IARs until at least March 31, 2017.

Form ADV filings

13. DVU made material misstatements and omissions relating to these compensation arrangements and the related conflicts of interest in Form ADVs filed with the Commission and delivered to clients. As an SEC-registered investment adviser, DVU was required to deliver to clients a Form ADV Part 2A Brochure for the firm and a Form ADV Part 2B Brochure Supplement for each IAR who provided advisory services to that client.

14. During the relevant period, Item 5 of the Part 2A Brochure required disclosure of how the investment adviser was compensated for its advisory services, including, whether the adviser or any of its supervised persons “accepts compensation for the sale of securities or other investment products” and an explanation that this practice constitutes a conflict of interest. Similarly, Item 5 of the Part 2B Brochure Supplement for each IAR required, “[i]f someone who is not a client provides an economic benefit to the [IAR] for providing advisory services” for the adviser to “generally describe the arrangement.”

15. Until at least March 30, 2016, DVU did not make these required disclosures with respect to the compensation arrangements described above. Prior to July 20, 2015, DVU’s Part 2A firm Brochure Item 5 disclosure described DVU’s compensation as “an annual fee based upon a percentage of the market value of the assets being managed by DVU,” stated that such fee “is exclusive of, and in addition to brokerage commissions, transaction fees, and other related costs and expenses which are incurred by the client,” and represented that DVU “does not [] receive any portion of these commissions, fees, and costs.” Similarly, the Part 2B Brochure Supplements with respect to DVU’s IARs misrepresented that the IARs received no economic benefit from someone other than a client for providing investment advisory services.

16. On March 23, 2015, SEC exam staff issued a deficiency letter to DVU. One of the findings in the letter was that DVU had failed to disclose the 7% paid by the Custodian Firms. DVU failed to adequately disclose the 7% payments in its 2A Brochure until March 30, 2016.

DVU Made Misrepresentations and Omissions Concerning QROPS Benefits

Statements Concerning U.S. and U.K. Tax Treatment

17. DVU IARs made a variety of definitive statements to prospective clients concerning purported tax benefits of a QROPS transfer that were materially misleading. For example, while citing such purported QROPS benefits, certain DVU IARs often omitted material information known to them about a possible risk that a transfer by a U.S. resident or citizen from a U.K. pension to a Malta-based QROPS would be treated by the U.S. Internal Revenue Service as a distribution subject to U.S. income taxes.

18. DVU IARs also made other statements to prospective clients about the U.S. and U.K. tax treatment if they remained in their U.K. pensions that in some cases were simply inaccurate and in other instances omitted material information. For example, certain DVU IARs told some prospective clients from at least 2014 through 2016 that U.K. pensions were subject to U.K. inheritance tax, which had not applied since at least 2011. Certain DVU IARs also told some prospective clients that any income paid to them from their U.K. pension would be taxed by both the U.S. and the U.K., while omitting the fact that U.S. residents could provide the U.K. pension provider with a U.K. tax form so that U.K. income taxes would not be withheld (on the basis that they were already paying U.S. income taxes on the distribution).

Statements Concerning Investment Options

19. DVU, through its IARs, told prospective clients that a QROPS provided “open architecture” investment flexibility in which clients would be able to choose from over 15,000 securities. However, the Trustee Firms placed limits on a client’s investment choices, including by prohibiting self-direction. Moreover, DVU only recommended investments from a more limited internal set of approved investments that, at most, contained fewer than 100 investment options. DVU’s IARs did not disclose the limitations known to them arising from both the internal set of approved investments and the restrictions imposed by the Trustee Firms when describing the investment flexibility benefits of a QROPS to prospective clients.

DVU’s Compliance Failures

20. DVU’s policies and procedures were not reasonably designed because they were not tailored to DVU’s actual business. In particular, prior to at least December 2015, DVU did not have policies and procedures to address its QROPS business and the conflicts of interest posed by the receipt of compensation from third parties in connection with its QROPS-related recommendations. In addition, DVU did not follow or implement many of its existing policies and procedures. In fall 2015, DVU hired an outside compliance consultant to conduct a review of DVU’s compliance policies and procedures.

Violations

21. As a result of the conduct described above, DVU willfully violated Sections 206(1), 206(2), 207 and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

22. Sections 206(1) and 206(2) of the Advisers Act prohibit fraudulent conduct by an investment adviser.

23. Section 207 of the Advisers Act makes it “unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein.”

24. Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder require, among other things, that a registered investment adviser adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules promulgated thereunder by the adviser and its supervised persons.

Undertakings

25. Respondent DVU has undertaken to:

a. Notice to Clients. Within thirty (30) days of the entry of this Order, Respondent shall send a letter, in a form not unacceptable to the Commission staff, to all existing DVU clients notifying them of the entry of this Order, and containing a summary of this Order, via mail, e-mail, or such other method as may be acceptable to the Commission staff. If sent electronically, the letter shall contain a hyperlink to the Order. If sent by mail, the letter shall contain a URL where the Order can be viewed and provide the client the opportunity to request a copy of the Order. Within fourteen (14) days of such a request, Respondent shall deliver a copy of the Order to the client. DVU 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 including in response to Item 9.

b. Training. Respondent shall provide a minimum of four (4) hours training for each calendar year from 2018 through 2020, to all DVU employees concerning the fiduciary duties of an investment adviser and the disclosure of conflicts of interest, including economic conflicts of interest.

c. Retention of Independent Compliance Consultant. Within forty-five (45) days after the date of this Order, Respondent shall engage an independent consultant not unacceptable to the Commission staff (the “Independent Consultant”), and provide a copy of this Order to the Independent Consultant. No later than ten (10) days following the date of the Independent Consultant’s engagement, Respondent shall provide the Commission staff with a copy of the engagement letter detailing the Independent Consultant’s responsibilities, which shall include the reviews and reports to be made by the Independent Consultant as set forth in this Order. The Independent Consultant’s compensation and expenses shall be borne exclusively by Respondent.

d. Independent Consultant’s Reviews. Respondent shall require the Independent Consultant to:

(1) conduct a comprehensive review of DVU’s current policies, procedures, and systems with respect to its investment advice, disclosures, internal controls and compliance with the Advisers Act;

(2) submit a written and dated report to DVU and the Commission Staff of its findings and recommendations for changes or improvements to the policies, procedures and systems, and a procedure for implementing the recommended changes and improvements;

(3) conduct an annual review, for each of the following two years from the date of the issuance of the Independent Consultant’s initial report, to assess whether DVU is complying with its then-current policies, procedures and systems and whether the then-current policies, procedures and systems are effective in achieving their stated purposes, and review DVU’s provision of training pursuant to paragraph 25(b) above; and

(4) submit a written and dated report to DVU and the Commission Staff of its findings and recommendations, if any, for additional changes or improvements to the policies, procedures and systems, and a procedure for implementing the recommended changes and improvements.

e. Independent Consultant's Reports. Respondent shall require the Independent Consultant to complete its review and issue its initial report within ninety (90) days after the date of the engagement. For the annual reviews conducted for each of the following two years, Respondent shall require the Independent Consultant to issue each of these reports within one-year of the date of the preceding report.

f. Respondent shall, within forty-five (45) days of receipt of each of the Independent Consultant's reports, adopt all recommendations contained in the reports, provided, however, that within thirty (30) days after the date of the applicable report, Respondent shall in writing advise the Independent Consultant and the Commission staff of any recommendations that it considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate, Respondent need not adopt that recommendation at that time but shall instead propose in writing an alternative policy or procedure designed to achieve the same objective or purpose as that recommended by the Independent Consultant. Respondent shall engage in good faith negotiations with the Independent Consultant in an effort to reach agreement on any recommendations objected to by Respondent. In the event that Respondent and the Independent Consultant are unable to agree on an alternative proposal within thirty (30) days, Respondent shall abide by the determinations of the Independent Consultant.

g. Within thirty (30) days of Respondent's adoption and implementation of all of the recommendations in the Independent Consultant's reports that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, Respondent shall certify in writing to the Independent Consultant and the Commission staff that Respondent has adopted and implemented all recommendations in the applicable report. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence.

h. Respondent shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of its files, books, records and personnel as reasonably requested for the Independent Consultant's review, including access by on-site inspection.

i. To ensure the independence of the Independent Consultant, Respondent (1) shall not have the authority to terminate the Independent Consultant or substitute another independent consultant for the initial Independent Consultant without prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

j. Respondent shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with DVU, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement shall also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with DVU, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

k. Respondent shall not be in, and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or any other doctrine of privilege to prevent the Independent Consultant from transmitting any information, reports, or documents to the Commission staff.

l. DVU shall certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance no later than sixty (60) days from the completion of the undertaking(s). The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. All reports and certifications described in these undertakings shall be submitted to Wendy B. Tepperman, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281, with a copy to the Office of Chief Counsel of the Enforcement Division.

m. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

IV.

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

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

- A. Respondent DVU cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2), 206(4), and 207 of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

- B. Respondent DVU is censured.
- C. Respondent shall comply with the undertakings enumerated in paragraph 25 above.
- D. Respondent DVU shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$8,000,000.00 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 DVU 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 Lara S. Mehraban, Associate Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties referenced in paragraph IV(D) above. 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