

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

INVESTMENT ADVISERS ACT OF 1940
Release No. 5002 / September 7, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18730 / September 7, 2018

In the Matter of

**BB&T SECURITIES, LLC,
as successor entity to BB&T
INVESTMENT SERVICES,
INC.**

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 BB&T Securities, LLC (“BB&T Securities” or “Respondent”), as successor entity to BB&T Investment Services, Inc. (“BB&T Investment Services”).

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 involves an investment adviser's failure to adequately disclose to clients facts giving rise to material conflicts of interest. Between approximately March 2012 through July 2015 (the "relevant period"), BB&T Investment Services, a then state-registered investment adviser, was engaged in the business of, among other things, recommending to its clients that they invest in wrap fee programs sponsored by three other investment advisers ("sponsors"), one of which was an affiliate of BB&T Investment Services (the "Affiliated Adviser"). In connection with these recommendations, BB&T Investment Services failed to disclose sufficient facts to enable clients to determine that the compensation arrangement between BB&T Investment Services and the Affiliated Adviser created an incentive for BB&T Investment Services and its investment advisory representatives ("Investment Counselors") to recommend that clients invest in the Affiliated Adviser's wrap fee program rather than the programs offered by the other two sponsors. By failing to disclose fully its compensation arrangement with the Affiliated Adviser, BB&T Investment Services violated Section 206(2) of the Advisers Act.¹

RESPONDENT

2. **BB&T Securities, LLC**, a Delaware limited liability company headquartered in Richmond, Virginia, is an investment adviser and broker-dealer registered with the Commission since June 2007 (as a broker-dealer) and September 2012 (as an investment adviser). As of August 2017, BB&T Securities had assets under management of approximately \$13.3 billion.

OTHER RELEVANT ENTITY

3. **BB&T Investment Services, Inc.**, now known as BB&T Investments, became a division of BB&T Securities following a reorganization and merger effective January 1, 2018. During the Relevant Period, BB&T Investment Services was a North Carolina corporation headquartered in Charlotte, North Carolina, and was a subsidiary of Branch Banking and Trust Company, a North Carolina banking company ("BB&T Bank"). BB&T Bank is a subsidiary of BB&T Corporation. BB&T Investment Services, which began operating as a state-registered investment adviser in 2001, registered with the Commission as an investment adviser in September 2015. BB&T Investment Services also registered with the Commission as a broker-dealer in July 1993. As of April 2017, BB&T Investment Services reported over \$759 million of assets under management.

FACTS

4. During the relevant period, BB&T Investment Services was an investment adviser whose advisory activities consisted primarily of the recommendation of other investment advisers to its clients.

¹ On January 1, 2018, pursuant to an internal corporate reorganization, BB&T Investment Services merged into BB&T Securities.

5. BB&T Investment Services operated out of BB&T Bank branches and primarily existed to recommend investments to retail customers of BB&T Bank. Among other things, BB&T Investment Services recommended wrap fee programs to bank customers.² During the relevant period, BB&T Bank had approximately 2,000 bank branches.

6. When a BB&T Bank customer was referred to an Investment Counselor, BB&T Investment Services' policies and procedures required the Investment Counselor to: (i) profile the client; (ii) discuss investment options with the client; and (iii) based on the information obtained from the client and the Investment Counselor's own research and analysis, recommend a wrap fee program that best met the client's investment objectives. Although the Investment Counselor assisted the client in selecting an appropriate investment strategy within the wrap fee program, BB&T Investment Services was not responsible for selecting the portfolio manager that would manage the client's account and had no authority to hire and fire the portfolio manager.

7. Profiling the client involved the Investment Counselor completing an on-line profile and collecting information about the client's investment objectives and risk tolerance. Specifically, according to BB&T Investment Services' disclosure documents, BB&T Investment Services tailored its investment advisory services to the individual needs of the client based on BB&T Investment Services' review of the following criteria:

Client investment objectives are identified by assessing the client's risk tolerance based upon their age, income, education, need for cash flows, investment goals, and emotional tolerance for volatility. The information provided by the client will be collected during client meetings, interviews, and/or questionnaires. Based on our analysis of this information, we will then recommend one or more wrap fee programs that best suits the client's specific needs based on their desire for a growth, balanced or conservative strategy.

8. BB&T Investment Services' policies and procedures required that its Investment Counselors be in contact with all of their clients on a periodic basis and conduct at least annually a client review. At the annual review, the Investment Counselor was required to discuss with the client whether, among other things, there had been any changes to the client's investment objectives. Based on the periodic meetings with clients, Investment Counselors could recommend that clients change or terminate their current wrap fee program sponsors or change investment strategies within a particular wrap fee program.

9. When recommending wrap fee programs, Investment Counselors could select among wrap fee programs sponsored by the Affiliated Adviser or two other investment advisers ("Adviser A" and "Adviser B"), neither of which was affiliated with BB&T Investment Services.

² BB&T Investment Services' disclosure documents explained that: "Wrap fee programs are programs that provide clients with investment management and brokerage services for a single fee."

10. The Affiliated Adviser, Adviser A and Adviser B each paid fees to BB&T Investment Services when clients recommended by BB&T Investment Services invested in their wrap fee programs. When paying these fees, the Affiliated Adviser and Adviser A had an “advanced fee” option whereby they would pay fees to BB&T Investment Services as a one-time upfront or advanced fee (“advanced fee”) rather than over time as the fees were earned. In addition, both the Affiliated Adviser and Adviser A had arrangements to reclaim or “recoup” some or all of the advanced fee if a client terminated all or part of its investment during the first few years. Specifically, if a client terminated its investment with the Affiliated Adviser within the first two years, the Affiliated Adviser would recoup the advanced fee from the client. By contrast, if a client terminated its investment with Adviser A within the first four years, Adviser A would recoup the advanced fee from BB&T Investment Services in accordance with the schedule set forth in paragraph 15 herein.

11. Pursuant to the Affiliated Adviser’s standard fee arrangement with BB&T Investment Services, when a BB&T Investment Services’ client invested in the Affiliated Adviser’s wrap fee program, the Affiliated Adviser would pay to BB&T Investment Services two years of fees, which equaled 2% of the client’s initial investment in the program, as a one-time upfront or advanced fee.³ BB&T Investment Services would then pay a portion of the advanced fee to the Investment Counselor.

12. Beginning in March 2012, the Affiliated Adviser allowed BB&T Investment Services to keep the advanced fee without any conditions, but the Affiliated Adviser charged any client who withdrew assets from the Affiliated Adviser’s wrap fee program within the first two years of management (excluding dividends and/or income) an early termination fee equal to 2% of the assets withdrawn from the program or, if the account was closed, 2% of the initial investment. Given that the early termination fee and the advanced fee were the same amount, in the event of early termination or withdrawal by the client, any advanced fee to the Investment Counselor would, in essence, be recouped from the *client* rather than the Investment Counselor.

13. Neither BB&T Investment Services nor the Affiliated Adviser disclosed to clients that BB&T Investment Services’ fee was paid as an advanced fee or that BB&T Investment Services could retain the advanced fee even if the client withdrew all or part of its assets within the first two years.

14. Adviser A also had an advanced fee option which it disclosed to clients. When a client of BB&T Investment Services invested with Adviser A, Adviser A would pay BB&T Investment Services a “financial professional fee.” BB&T Investment Services would pay a portion of the financial professional fee to the Investment Counselor who recommended that the client invest in Adviser A’s wrap fee program. The financial professional fee, which was part of the total advisory fee that a client paid to Adviser A, was negotiated between the client and BB&T Investment Services and could not exceed 1.50% of client assets on an annual basis. The

³ Pursuant to the agreement between the Affiliated Adviser and BB&T Investment Services, the annual fee payable to BB&T Investment Services under the standard fee structure was 1.00% of the client’s investment and the advanced fee was 2.00% of the market value of the account. (The Affiliated Adviser also paid advanced fees under its discounted and fixed income fee structures, but in lesser amounts.)

client could elect for BB&T Investment Services to receive 2.5 years of its annual fee as an upfront, advanced fee payment upon the establishment of the relationship between the client and Adviser A. (The advanced fee was determined by multiplying the financial fee negotiated between the client and BB&T Investment Services by a factor established by Adviser A, which was 2.5 during the relevant period.)

15. In contrast to the Affiliated Adviser's program with its two-year termination fee, if a BB&T Investment Services client in Adviser A's wrap fee program withdrew all or a portion of his or her funds, the client would not pay an early termination fee. However, if the withdrawal occurred within the first four years of the commencement of the relationship, any advanced fee paid by Adviser A to BB&T Investment Services would be recouped from BB&T Investment Services' *Investment Counselor* rather than the client. Specifically, the amount recouped (the "chargeback") would be equal to the advanced fee on the amount being withdrawn, multiplied by the following factor in each of the first four years following the date the client began investing in the wrap fee program:

Year 1	100%
Year 2	60%
Year 3	40%
Year 4	20%

Adviser A disclosed to clients that although the chargeback described above would not result in a charge to the client, the chargeback schedule "may create a conflict of interest for the Financial Professional [BB&T Investment Services] who may have an incentive to encourage you to keep your assets in the [Adviser A] Program until this four year period has expired."

16. Adviser B did not have an advanced fee option and did not impose early termination fees on clients.

17. Although the Affiliated Adviser, Adviser A, and Adviser B each offered a number of comparable investment strategies and/or model portfolios that could be recommended to a client depending on the client's investment goals, the Investment Counselors recommended to a significant majority of BB&T Investment Services' clients that they invest in the wrap fee program sponsored by the Affiliated Adviser. As of March 2015, for example, approximately 78% of BB&T Investment Services' client assets were invested in wrap fee programs sponsored by the Affiliated Adviser.

18. BB&T Investment Services made certain disclosures to clients regarding conflicts of interests associated with the wrap fee programs in Part 2A of its Form ADV, including, for example, its affiliation with the Affiliated Adviser. However, BB&T Investment Services failed to disclose other information that would enable clients to determine that the investment advice that they received from BB&T Investment Services may not have been disinterested and may have been influenced by actual or potential conflicts of interest. Specifically, BB&T Investment Services did not disclose, among other things, that: (i) the Affiliated Adviser paid advanced fees to BB&T Investment Services, and BB&T Investment Services passed a portion of the advanced fees through to its Investment Counselors; (ii) the Affiliated Adviser's wrap fee program was

the only one of the three that always paid BB&T Investment Services an advanced fee and allowed BB&T Investment Services to retain the entire advanced fee associated with a client's account if the client withdrew funds or closed the account during the first two years; (iii) BB&T Investment Services always allowed an Investment Counselor to retain his or her portion of the advanced fee if a client withdrew funds or closed the account within the first two years; and (iv) in the event of such early termination or withdrawal, the Affiliated Adviser's program was the only one that, in effect, recouped the advanced fee paid to BB&T Investment Services (and, in part, the Investment Counselor) from the client. Thus, based on the information provided, clients were unable to evaluate whether the Affiliated Adviser's compensation arrangement was potentially more attractive to BB&T Investment Services and its Investment Counselors than those typically offered by Adviser A and Adviser B.

19. Because of BB&T Investment Services' inadequate disclosure of its compensation arrangement with the Affiliated Adviser, clients were unable to evaluate whether BB&T Investment Services' fee arrangements with the Affiliated Adviser, Adviser A and Adviser B may have: (i) incentivized BB&T Investment Services' Investment Counselors to recommend the Affiliated Adviser's wrap fee programs over those offered by Adviser A and Adviser B when giving investment advice to clients; and (ii) caused the Investment Counselors to place their interests ahead of those of their clients, contrary to the fiduciary duty BB&T Investment Services owed its clients.

20. As a result of the conduct described above, BB&T Investment Services violated 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.

Remedial Measures

21. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by BB&T Investment Services. In June 2015, the Commission's Office of Compliance Inspections and Examinations staff conducted an examination of BB&T Investment Services that included a review of the firm's fee arrangement with the Affiliated Adviser. On July 15, 2015, the Affiliated Adviser eliminated the early termination fee and, by the end of 2015, BB&T Investment Services and the Affiliated Adviser voluntarily had reimbursed all termination fees, in the amount of \$635,535, to clients who paid such fees.

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 BB&T Securities cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act.

B. Respondent shall, within fourteen (14) days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to 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
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 BB&T Securities, LLC 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 Aaron W. Lipson, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Atlanta Regional Office, 950 East Paces Ferry Road, N.E., Suite 900, Atlanta, GA 30326-1382.

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