

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

**SECURITIES ACT OF 1933**  
**Release No. 10633 / April 25, 2019**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3- 19154**

**In the Matter of**

**DEUTSCHE BANK TRUST  
COMPANY AMERICAS,**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-DESIST  
PROCEEDINGS, PURSUANT TO SECTION 8A OF  
THE SECURITIES ACT OF 1933, MAKING  
FINDINGS, AND IMPOSING REMEDIAL  
SANCTIONS AND 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 8A of the Securities Act of 1933 (“Securities Act”) against Deutsche Bank Trust Company Americas (“DBTCA” 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 8A of the Securities Act of 1933, 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 finds<sup>1</sup> that:

---

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

## **Summary**

1. This matter involves DBTCA's material omissions, in light of other disclosures, in documents that described its process for the review and selection of hedge funds ("Hedge Funds") included on its wealth management platform ("Platform"). DBTCA provides discretionary and non-discretionary investment management services (the "Services") to private banking clients. The Services include portfolio allocation and asset selection for each account, some of which include allocations to Hedge Funds. In marketing materials and other related documents provided to clients, DBTCA disclosed that it relies on an independent, in-house research group ("Research Group") that uses a multi-step due diligence process to identify, evaluate, and select best-in-class asset managers. From as early as 2009 through mid-2018 ("relevant time period"), however, DBTCA failed to also disclose that the Research Group only evaluated those Hedge Funds that would agree to share their management fees with DBTCA. This omission rendered the disclosures concerning its due diligence materially misleading. As a result, DBTCA violated Section 17(a)(2) of the Securities Act.

## **Respondent**

2. DBTCA is a New York chartered commercial bank and member of the Federal Reserve System. DBTCA is a wholly-owned subsidiary of Deutsche Bank Trust Corporation, a New York corporation, which in turn is an indirect wholly-owned subsidiary of Deutsche Bank Aktiengesellschaft.

## **Facts**

3. DBTCA provides the Services to high net-worth individuals, families and select institutions, and develops actively managed investment portfolios that utilize multiple asset classes. DBTCA receives an account-level advisory fee from the client for the Services. Some client portfolios include allocations to Hedge Funds. DBTCA does not charge an account level advisory fee on Hedge Fund positions.

4. During the relevant time period, DBTCA disclosed in various marketing materials, requests for proposal, and other related documents that allocations to certain sub-asset classes in client portfolios were implemented through top quartile and/or best-in-class mutual funds, ETFs and alternative products, including Hedge Funds, selected from a broad database of asset managers. Some of DBTCA's disclosures also highlighted that the Research Group performed a quantitative and qualitative due diligence process to identify, evaluate and select asset managers from an "extremely large universe." DBTCA approved all managers and products on the Platform, including Hedge Funds.

5. Since at least 2009, the Research Group has limited its review and selection of Hedge Funds to only those managers that agreed to pay a portion of its management fee to DBTCA. These payments are referred to as "retrocessions." As a result, each Hedge Fund that DBTCA recommended to its clients during the relevant time period has paid retrocessions to DBTCA. None of DBTCA's marketing materials during the relevant time period disclosed that

the Research Group's due diligence process included only Hedge Funds that agreed to pay retrocessions.

6. Moreover, DBTCA's advisory agreements disclosed that pooled investment vehicles charge management fees that are separate from the advisory fee and that DBTCA "may" receive all or a portion of such fees when, in fact, the payment of retrocessions was a requirement for all Hedge Funds that DBTCA recommended.

7. Prior to any client completing the Hedge Fund subscription process and acquiring interests in such Hedge Fund, DBTCA disclosed to each client the existence and amount of the retrocession that DBTCA would receive from such Hedge Fund, but, again, did not disclose that DBTCA recommended only those Hedge Funds that agreed to pay retrocessions.

8. DBTCA's omission from its disclosures that only Hedge Funds that agreed to pay retrocessions were recommended to its clients rendered materially misleading DBTCA's disclosures regarding its due diligence process for Hedge Funds and statements in advisory agreements stating only generally that it "may" receive retrocessions for investment in pooled investment vehicles.

9. After the commencement of the SEC investigation, DBTCA amended its disclosures with respect to Hedge Funds to disclose that DBTCA will consider and recommend only Hedge Funds that agree to pay retrocessions.

#### **Violations**

10. As a result of the conduct described above, DBTCA violated Section 17(a)(2) of the Securities Act, which prohibits any person in the offer or sale of securities from obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make statements made not misleading.

#### **IV.**

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

Accordingly, pursuant to Section 8A of the Securities Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. DBTCA shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$500,000 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 DBTCA 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 C. Dabney O'Riordan, Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 444 S. Flower Street, Suite 900, Los Angeles, CA 90071.

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.

Vanessa A. Countryman  
Acting Secretary