

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5336 / September 3, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19411

In the Matter of

**LEFAVI WEALTH
MANAGEMENT, 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 Lefavi Wealth Management, Inc. (“LWM” 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 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:

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.

Summary

These proceedings arise as a result of registered investment adviser LWM's breaches of fiduciary duty and disclosure failures in connection with its recommendation and investment of client assets in non-traded real estate investment trusts, business development companies, and private placements (collectively, "Alternative Investments"). From June 2014 through December 2016 (the "Relevant Period"), LWM recommended and invested certain advisory client assets in Alternative Investments at a share price that reflected a seven percent commission. During the Relevant Period, however, LWM failed to disclose that it could have invested advisory client assets in the same Alternative Investment at a lower share price and that LWM did, in almost all instances, recommend and invest advisory client assets in Alternative Investments with higher share prices that included seven percent commissions. LWM also failed to disclose the conflict of interest associated with its and its investment adviser representatives' ("IARs") receipt of additional compensation for investing advisory client assets in Alternative Investments at a higher share price that included a commission. LWM's practice of recommending and investing advisory client assets in Alternative Investments with embedded commissions, rather than seeking for clients lower share prices for the exact same investments, was inconsistent with LWM's duty to seek best execution for those transactions. LWM did not adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with Alternative Investments.

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

Respondent

1. **Lefavi Wealth Management, Inc. ("LWM")**, a Utah corporation with its principal place of business in Salt Lake City, Utah, has been registered with the Commission as an investment adviser since 2012. In its Form ADV brochure filed on April 1, 2019, LWM reported regulatory assets under management of approximately \$303 million for 693 clients.

Other Relevant Entities and Individuals

2. **Bruce A. Lefavi Securities, Inc. ("BLS")**, a Utah corporation with its principal place of business in Salt Lake City, Utah, has been registered with the Commission as a broker-dealer since 1981. BLS is affiliated with LWM through common ownership.

Background on Alternative Investment Fee Structure

3. During the Relevant Period, LWM provided asset management services to its advisory clients ("Advisory Clients"), and LWM's IARs recommended various investment products to their clients, including Alternative Investments.

4. The Alternative Investments that LWM recommended to its Advisory Clients included a seven percent commission, which was embedded in the Alternative Investments' share price (the "Selling Commission"). For example, if the share price of an Alternative Investment was \$10.00 per share, the selling broker-dealer, in this case BLS, received \$0.70 per share as the Selling Commission. On a \$10,000 investment, this equates to a \$700 commission. BLS then paid the Selling Commission to LWM, which paid a portion of the commission to BLS's registered representatives, who were also IARs of LWM for the advisory client accounts at issue, and retained the remainder.

5. During the Relevant Period, investment advisers and broker-dealers purchasing for clients of an investment adviser could typically purchase the same Alternative Investments at a share price that did not include any embedded commission ("Net of Commission"). For example, if the share price of an Alternative Investment was \$10.00, but the Alternative Investment was purchased Net of Commission, then the Alternative Investment's price per share would decrease by the seven percent Selling Commission to \$9.30 per share.

6. During the Relevant Period, many Alternative Investment prospectuses also permitted a discount on the Alternative Investment share price when a broker-dealer invested, in aggregate, a minimum dollar amount of assets into a specific Alternative Investment or a "single purchaser," as defined by the prospectus, invested a certain dollar amount ("Volume Discounts"). Volume Discounts reduced the Selling Commission embedded in the share price, thereby reducing the cost to the client on each share purchased.

7. Purchasing Alternative Investments Net of Commission or with Volume Discounts benefitted Advisory Clients because each of these options lowered the price per share of the Alternative Investments, enabling Advisory Clients to buy more shares for the same dollar amount investment. At the same time, purchasing Alternative Investments Net of Commission or with Volume Discounts decreased the amount of compensation received by BLS, and subsequently, LWM and its dual registered IARs.

LWM's Practices Related to Investing Clients in Alternative Investments

8. During the Relevant Period, most Alternative Investments that LWM recommended to and invested Advisory Client assets in permitted the purchase of the investments Net of Commission. However, LWM, in almost all instances during the Relevant Period, recommended and invested Advisory Client assets in Alternative Investments that included the seven percent Selling Commission embedded in the share price. From June 2014 through December 2015, LWM, in addition to the compensation from the Selling Commission, also received a yearly asset management fee, usually 0.75 percent.

9. During the Relevant Period, certain Advisory Clients were also eligible for Volume Discounts for many of the Alternative Investments in which they were invested. However, during the Relevant Period, LWM did not seek or obtain Volume Discounts on the Alternative Investments in which it recommended and invested Advisory Client assets.

10. As a result of LWM recommending to and investing Advisory Client assets in Alternative Investments at a share price that included embedded commissions, and LWM failing to invest client assets Net of Commission or seeking to obtain Volume Discounts, BLS, and ultimately LWM and its dual registered IARs, received compensation that they would not have received if the investments had been made Net of Commission or with Volume Discounts.

LWM Failed to Adequately Disclose its Alternative Investment Practices

11. As an investment adviser, LWM was obligated to fully disclose all material facts to Advisory Clients, including any conflicts of interest between itself and Advisory Clients. To meet this disclosure obligation, LWM was required to provide Advisory Clients with sufficient information so that they could understand the conflicts of interest that LWM had, enabling clients to give informed consent to such conflicts or practices or reject them. LWM's ability to purchase Alternative Investments Net of Commission or with Volume Discounts for Advisory Clients created a conflict of interest for LWM that, as a fiduciary to its clients, required disclosure.

12. LWM's Form ADV filings disclosed that there was a conflict of interest for LWM and its IARs to recommend or invest Advisory Client assets in asset classes that offered a higher level of compensation. LWM, however, failed to disclose in its Form ADV filings or otherwise that the same Alternative Investments were available at a lower share price through Net of Commission purchases. Additionally, LWM's disclosure from June through December 2014 that it "may" collect commissions on such purchases was misleading in that, in fact, BLS collected the embedded Selling Commission in almost all instances in which it invested Advisory Client assets in Alternative Investments. LWM also did not disclose that the commissions BLS received from these purchases were, in all instances, passed through to LWM and its dual registered IARs and that this created a conflict of interest.

13. LWM failed to disclose in its Form ADV filings or otherwise that Alternative Investments LWM recommended to and invested Advisory Client assets in offered Volume Discounts that may have lowered the price per share that Advisory Clients paid, and that the availability to sell the products with the full Selling Commission, rather than a Volume Discount, created a conflict of interest since LWM and its dual registered IARs were incentivized to not seek such discounts because their compensation would be lower if Volume Discounts applied.

14. LWM's disclosure failures with respect to Volume Discounts also made certain statements in its Form ADV filings untrue. For example, LWM's Form ADV filings stated generally that the "nature of the clients and/or trading activity on behalf of client accounts are such that trade aggregation does not garner any client benefit (in regards to mutual funds for example)." This statement was untrue given that Volume Discounts for Alternative Investments were available for many Advisory Client purchases of Alternative Investments, and the application of such discounts would have reduced the commissions Advisory Clients paid.

15. Last, in light of LWM's Alternative Investment practices, certain of its Form ADV filing disclosures during the Relevant Period were misleading. For example, LWM's Form ADV filings provided that "[i]n the administration of client accounts, portfolios and financial reporting,

[LWM] faces inherent conflicts of interest” but “follows a Code of Ethics that provides that the client’s interest is always held above that of the Firm and its associated persons.” However, LWM did not act in its Advisory Clients’ best interests when it invested Advisory Client assets in Alternative Investments at a higher share price when a lower share price of the same exact investment was available through Net of Commission purchases or application of Volume Discounts.

LWM Violated its Duty to Seek Best Execution

16. Section 206 of the Advisers Act imposes on investment advisers a fiduciary duty to act for the benefit of their clients. *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191 (1963). That duty includes, among other things, an obligation to seek best execution for client transactions – i.e., “to seek the most favorable terms reasonably available under the circumstances.” *In the Matter of Fidelity Management Research Company*, Investment Advisers Act Rel. No. 2713 (March 5, 2008) (citing Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 and Related Matters, Exchange Act Rel. No. 23170 (Apr. 28, 1986)).

17. LWM disclosed in its Form ADV filings that it would seek the best execution possible. However, by causing Advisory Clients to purchase Alternative Investments at the higher share price with the Selling Commission when such Advisory Clients were otherwise eligible to purchase the exact same investment at a lower share price either through Net of Commission or Volume Discounts, LWM violated its duty to seek best execution for those transactions and failed to act in its Advisory Clients’ best interest.

Compliance Deficiencies

18. During the Relevant Period, LWM failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act, and the rules thereunder, in connection with conflicts of interest related to Alternative Investments. Although LWM had a written policies and procedures manual that provided that conflicts of interest should be avoided, LWM did not have any specific written policies and procedures in place regarding how to identify or disclose conflicts of interest related to Alternative Investments or how to address the conflicts of interest created by the additional compensation it and its IARs received for investing Advisory Client assets in Alternative Investments. Additionally, throughout the Relevant Period, LWM lacked policies and procedures regarding when Net of Commission and Volume Discounts should be applied and what disclosures regarding Net of Commission and Volume Discounts were required to Advisory Clients.

19. During the Relevant Period, LWM also failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act, and the rules thereunder, in connection with its duty to seek best execution related to Alternative Investments. Although the policies and procedures manual stated that LWM, as a fiduciary, would “endeavor to seek best execution when placing trades for clients,” the manual did not address, aside from selection of a broker-dealer, how this analysis would be done or what disclosures LWM

would make regarding best execution.

Violations

20. Section 206(2) of the Advisers Act makes it unlawful for an adviser, directly or indirectly, to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or prospective client. Scienter is not required to establish a violation of Section 206(2), which 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, 194-95 (1963)). As a result of the conduct described above, LWM willfully violated Section 206(2).

21. Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require a registered investment adviser to, among other things, “[a]dopt and implement written policies and procedures reasonably designed to prevent violation” of the Advisers Act and its rules. As a result of the conduct described above, LWM willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Undertakings

22. Respondent has undertaken to:

- a. Within thirty (30) days of the entry of this Order, review and correct as necessary all relevant disclosure documents concerning Alternative Investments.
- b. Within thirty (30) days of the entry of this Order, evaluate, update (if necessary), and review for the effectiveness of their implementation, Respondent’s policies and procedures so that they are reasonably designed to prevent violations of the Advisers Act in connection with disclosures regarding Alternative Investments.
- c. Within forty (40) days of the entry of this Order, certify, in writing, compliance with the undertaking(s) ordered pursuant to Section D, below. 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. The certification and supporting material shall be submitted to Kimberly Frederick, Assistant Regional Director, Division of Enforcement, Denver Regional Office, U.S. Securities and Exchange Commission, Bryon G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, CO 80294, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549.
- d. For good cause shown, the Commission staff may extend any of the procedural dates relating to these 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 the last day.

IV.

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

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

- A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.
- B. Respondent is censured.
- C. Respondent shall pay disgorgement, prejudgment interest, and a civil monetary penalty totaling \$1,288,735.22 as follows:
 - i. Respondent shall pay disgorgement of \$994,296.10 and prejudgment interest of \$144,439.12, consistent with the provisions of this Subsection C.
 - ii. Respondent shall pay a civil monetary penalty in the amount of \$150,000, consistent with the provisions of this Subsection C.
 - iii. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest described above for distribution to applicable past and present Advisory Clients. 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, they shall not argue that they are entitled to, nor shall they 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 they 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.

- iv. Within ten (10) days of the issuance of this Order, Respondent shall deposit the full amount of the disgorgement, prejudgment interest, and civil monetary penalty (the “Distribution Fund”) into an escrow account at a financial institution not unacceptable to the Commission staff and Respondent shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely payment into the escrow account is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 -17 C.F.R. § 201.600 or 31 U.S.C. § 3717.
- v. Respondent shall be responsible for administering the Distribution Fund and may hire a professional acceptable to the Commission staff, at its own cost, to assist it in the administration of the distribution. The costs and expenses of administering the Distribution Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Distribution Fund.
- vi. Respondent shall distribute the amount of the Distribution Fund to the applicable past and present Advisory Clients affected by the above conduct described herein, pursuant to a disbursement calculation (the “Calculation”) that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. The Calculation shall be subject to a *de minimis* threshold. No portion of the Distribution Fund shall be paid to any affected investor account in which Respondent or its past or present officers or directors have a financial interest.
- vii. Respondent shall, within ninety (90) days from the date of this Order, submit a Calculation to the Commission staff for review and approval. Respondent also shall provide the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event one or more objections by the Commission staff to Respondent’s Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation with ten (10) days of the date that the Commission staff notifies Respondent of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.
- viii. After the Calculation has been approved by the Commission staff, Respondent shall submit a payment file (the “Payment File”) for review and acceptance by the Commission staff demonstrating the application of the methodology to each harmed investor. The Payment File should identify, at a minimum, (i) the name of each affected harmed investor; (ii) the exact amount of the payment to be made; and (iii) the amount of any *de minimis* threshold to be applied.

- ix. Respondent shall disburse all amounts payable to affected investors within ninety (90) days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in Paragraph (xi) of this Subsection C.
- x. If, after Respondent's reasonable efforts to distribute the Distribution Fund pursuant to the approved Payment File, Respondent is unable to distribute any portion of the Distribution Fund for any reason, including an inability to locate an affected past or present Advisory Client or a beneficial owner of an affected past or present Advisory Client or any factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934 when the distribution of the funds is complete and before the final accounting provided for in Paragraph (xii) below is submitted to Commission staff. Any such payment shall be made in accordance with Paragraph (xii) below.
- xi. A Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondent shall be responsible for any and all tax compliance responsibilities associated with the Fair Fund, including but not limited to tax obligations resulting from the Fair Fund's status as a QSF and the Foreign Account Tax Compliance Act (FATCA), and may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services shall be borne by Respondent and shall not be paid out of the Distribution Fund.
- xii. Within 150 days after Respondent completes the disbursement of all amounts payable to affected past and present Advisory Clients, Respondent shall submit to the Commission staff a final accounting and certification of the disposition of the Distribution Fund for Commission approval. The final accounting and certification shall include, but not be limited to: (i) the amount paid to each affected past or present Advisory Client, with the reasonable interest amount, if any, reported separately; (ii) the date of each payment; (iii) the check number or other identifier of the money transferred; (iv) the amount of any returned payment and the date received; (v) a description of the efforts to locate past or present Advisory Clients whose payment was returned or to whom payment was not made for any reason; (vi) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (vii) an affirmation that Respondent has made payments from the Distribution Fund to affected past and present Advisory Clients in accordance with the Calculation approved by the Commission staff. Respondent shall submit proof and supporting documentation of such payment (whether in the form of electronic payments or cancelled checks) in a form acceptable to the Commission staff

under a cover letter that identifies Respondent and the file number of these proceedings to Kimberly L. Frederick, Assistant Regional Director, Denver Regional Office, Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, Colorado, 80294. Respondent shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

- xiii. The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Distribution Fund 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.
- xiv. Respondent's transfer of any undistributed funds to the Commission for transmittal to the United States Treasury must be made in one of the following ways:
 - (a) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
 - (b) 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
 - (c) 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 Respondent 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 Kimberly L. Frederick, Assistant Regional Director, Denver Regional Office, U.S. Securities and Exchange Commission, Bryon G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, CO 80294, or such other address as the Commission staff may provide.

D. Respondent shall comply with the undertakings enumerated in Section III, paragraph 22 above.

By the Commission.

Vanessa A. Countryman
Secretary