

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10777 / April 24, 2020

SECURITIES EXCHANGE ACT OF 1934
Release No. 88745 / April 24, 2020

INVESTMENT ADVISERS ACT OF 1940
Release No. 5487 / April 24, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19769

In the Matter of

**RBC CAPITAL MARKETS
LLC,**

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND
CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTION
15(b) OF THE SECURITIES
EXCHANGE ACT OF 1934, AND
SECTION 203(e) 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 Section 8A of the Securities Act of 1933 (“Securities Act”), Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”), and Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”), against RBC Capital Markets LLC (“RBC” or “Respondent”).

II.

In anticipation of the institution of these proceedings, RBC 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, RBC consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Section 15(b) of the Securities Exchange Act of 1934, and Section 203(e) 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 finds that:

Summary

1. From at least July 2012 through August 2017 (the "Relevant Period"), RBC disadvantaged certain retirement plan and charitable organization brokerage customers who maintained accounts at RBC ("Eligible Customers")¹ by failing to ascertain that they were eligible for a less expensive share class, and recommending and selling them more expensive share classes in certain open-end registered investment companies ("mutual funds") when less expensive share classes were available. RBC did so without disclosing that it would receive greater compensation from the Eligible Customers' purchases of the more expensive share classes. Eligible Customers did not have sufficient information to understand that RBC had a conflict of interest resulting from compensation it received for selling the more expensive share classes. Specifically, RBC recommended and sold these Eligible Customers Class A shares with an up-front sales charge, or Class B or Class C shares with a back-end contingent deferred sales charge ("CDSC") (a deferred sales charge the purchaser pays if the purchaser sells the shares during a specified time period following the purchase) and higher ongoing fees and expenses, when these Eligible Customers were eligible to purchase load-waived Class A and/or no-load Class R shares. RBC omitted material information concerning its compensation when it recommended the more expensive share classes. RBC also did not disclose that the purchase of the more expensive share classes would negatively impact the overall return on the Eligible Customers' investments, in light of the different fee structures for the different fund share classes.

2. In making those recommendations of more expensive share classes while omitting material facts, RBC violated Sections 17(a)(2) and 17(a)(3) of the Securities Act. These provisions prohibit, respectively, in the offer or sale of securities, obtaining money or property by means of an omission to state a material fact necessary to make statements made not misleading, and engaging in a course of business which operates as a fraud or deceit on the purchaser.

¹ The term "Eligible Customers" may include, among other things, customers that held the following types of retirement accounts: 401(k) plans, profit-sharing plans, defined benefit plans, and certain employer-sponsored IRA accounts. Eligible Customers also include accounts held by tax-exempt, non-profit organizations.

Respondent

3. **RBC Capital Markets LLC** is a Minnesota limited liability company headquartered in New York, New York, and is registered with the Commission as a broker-dealer, investment adviser, and municipal advisor. RBC is an indirect, wholly-owned subsidiary of the Royal Bank of Canada.

Background

4. Mutual funds often offer different fund share classes that each represent a common interest in an investment portfolio, but differ in the amount and types of sales charges and fees a fund investor may incur. For funds that have sales charges or sales “loads,” the timing and amount of sales loads typically vary between share classes. These sales charges are normally assessed as a percentage of an investor’s investment. For example, Class A shares often are subject to an up-front sales charge in addition to ongoing marketing and distribution fees, known as Rule 12b-1 fees. Class B and Class C shares often do not have an up-front sales charge, but have higher Rule 12b-1 fees. Class R shares have no up-front sales charges, but may have sub-classes with Rule 12b-1 fees equal to or greater than those of Class A shares.

5. Many mutual funds provide sales-load waivers for Class A shares to qualified retirement and charitable accounts. Such waivers are important to investors because they allow investors to buy shares at the fund’s current net asset value. Even when not eligible to purchase load-waived Class A shares, qualified retirement customers may be eligible to purchase Class R shares. Eligibility requirements for load-waived Class A shares and Class R shares vary from fund to fund, and are disclosed in the prospectus and statement of additional information for each relevant fund.

6. The sales charges and fees associated with different share classes affect mutual fund shareholders’ returns. A mutual fund investor eligible for a sales charge waiver in Class A shares will likely obtain a higher return by investing in Class A shares than incurring the ongoing sales-related costs associated with Class B and Class C shares in the same fund. However, in the absence of a sales charge waiver, the investor may, in certain instances, be better off investing in Class R shares (if eligible) rather than Class A, B or C shares because of the impact of the sales charge in Class A shares on the return and the lower ongoing fees and expenses associated with certain Class R shares.

7. Sales charges and fees associated with different share classes also affect a broker-dealer’s revenue earned from selling mutual fund shares. Broker-dealers typically receive all or a portion of the sales charges and Rule 12b-1 fees charged to their customers. For example, broker-dealers generally receive higher ongoing fees when their customers hold Class B and Class C shares as compared to Class A shares or Class R shares. Broker-dealers therefore may earn more compensation when recommending a share class to customers if the customer’s purchase of that share class will increase a broker-dealer’s revenue when compared to another share class in the same fund that the broker-dealer could recommend to the customer.

**RBC Omitted Material Facts When Recommending
Class A, Class B, and Class C Mutual Fund Shares to Eligible Customers**

8. During the Relevant Period, RBC did not have adequate systems and controls in place to determine whether retirement plans and charitable account customers were eligible to purchase load-waived Class A shares or Class R shares. As a result, RBC failed to provide available sales charge waivers in at least 16,475 transactions involving approximately 2,391 Eligible Customer accounts. These were transactions in which Eligible Customers could have purchased load-waived Class A shares, but RBC recommended and sold them Class A shares with an up-front sales charge or Class B or Class C shares with a CDSC and higher ongoing fees and expenses than the load-waived Class A shares. In addition, RBC failed to provide Eligible Customers the opportunity to purchase Class R shares in at least 59,945 transactions involving approximately 2,180 Eligible Customer Accounts, resulting in the Eligible Customers instead purchasing Class A shares with an up-front sales charge, or Class B or Class C shares with a CDSC and higher ongoing fees and expenses. In connection with all of these recommendations, RBC omitted to state to Eligible Customers that it would earn more revenue from customer purchases of Class A shares with an up-front sales charge or Class B or Class C shares with a CDSC and higher ongoing expenses as compared to load-waived Class A shares and no-load Class R shares for which the customers were eligible. RBC omitted material information concerning its compensation when it recommended the more expensive share classes. RBC also omitted to state to the Eligible Customers that their purchases of the more expensive shares would negatively impact the customers' overall investment returns. In the context of multiple-share-class mutual funds, in which the only reason for the differences in rate of return among classes is the cost structure of the different classes, information about this cost structure would accordingly be important to a reasonable investor.

9. Eligible Customers paid a total of \$2,607,676 in up-front sales charges, CDSCs, and higher ongoing fees and expenses from purchases of mutual fund share classes for which they did not receive an applicable sales charge waiver or did not otherwise receive the most cost-effective share class for which they were eligible that was available on RBC's platform during the Relevant Period.

Violations

10. As a result of the conduct described above, RBC willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit 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, and from engaging in any transaction, practice, or course of business which operates

or would operate as a fraud or deceit upon the purchaser, respectively.² Negligence is sufficient to establish violations of Sections 17(a)(2) and (3) of the Securities Act. *See Aaron v. SEC*, 446 U.S. 680, 696-97 (1980). RBC omitted to state to Eligible Customers that RBC would earn greater compensation in recommending Class A shares with an up-front sales charge, or Class B or Class C shares with a CDSC and higher ongoing fees and expenses, because these share classes would generate additional revenue for RBC compared to other less expensive share classes available to Eligible Customers. Thus, Eligible Customers did not have sufficient information to understand that RBC had a conflict of interest resulting from sales of the more expensive share classes. RBC also omitted to state to the Eligible Customers that the purchase of these more expensive shares would negatively impact the customers' overall investment returns, in light of the different fee structures for the different fund share classes. As a result, Eligible Customers incurred up-front sales charges, CDSCs, and higher ongoing fees and expenses, and RBC received additional revenue.

Remedial Efforts

11. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

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 Section 8A of the Securities Act, Section 15(b)(4) of the Exchange Act, and Section 203(e) 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 17(a)(2) and 17(a)(3) of the Securities Act.
- B. Respondent is censured.
- C. Respondent shall pay disgorgement, prejudgment interest, and a civil monetary penalty totaling \$3,889,007, as follows:

² "Willfully," for purposes of imposing relief under Section 15(b) of the Securities Act and Section 203(e) of the Advisers Act, "means no more than that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ed]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

- (i) Respondent shall pay disgorgement of \$2,607,676 and prejudgment interest of \$631,331, consistent with the provisions of this Subsection C.
- (ii) Respondent shall pay a civil monetary penalty of \$650,000, 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 \$3,889,007 in penalties, disgorgement, and prejudgment interest described above for distribution to Eligible Customers. 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 these proceedings. 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 these proceedings.
- (iv) Within ten (10) days of the issuance of this Order, Respondent shall deposit \$3,889,007 (the "Fair 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 Fair Fund and may hire a professional to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Fair Fund.
- (vi) Respondent shall pay from the Fair Fund to each Eligible Customer an amount representing the up-front sales charge, CDSCs, and/or higher ongoing fees Respondent overcharged each Eligible Customer during the period July 2012 through August 2017, plus reasonable interest. No portion of the Fair Fund shall be paid to any Eligible Customer account in

which Respondent, or any of its officers or directors, has a financial interest.

- (vii) Respondent shall, within ninety (90) days from the date of this Order, submit a proposed disbursement calculation (the “Calculation”) to the Commission staff for review and approval. At or about the time of submission of the proposed Calculation to the staff, Respondent, along with any third-parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the distribution, shall make themselves available for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. 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 of one or more objections by the Commission staff to Respondent’s proposed 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 within 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 Eligible Customer. The Payment File should identify, at a minimum, (1) the name of each affected harmed investor; (2) the exact amount of the payment to be made; and (3) the amount of any *de minimis* threshold to be applied.
- (ix) Respondent shall complete the disbursement of all amounts payable to affected shareholder accounts within ninety (90) days of the date that the Commission staff approves the Calculation, unless such time period is extended as provided in Paragraph xiii of this Subsection C.
- (x) If Respondent is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected Eligible Customer or a beneficial owner of an affected Eligible Customer 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 funds is complete and before the final accounting provided for in Paragraph xii of this Subsection C is submitted to the Commission staff.

- (xi) Respondent shall be responsible for any and all tax compliance responsibilities associated with the Fair Fund and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondent and shall not be paid out of the Fair Fund.
- (xii) Within 150 days after Respondent completes the disbursement of all amounts payable to affected Eligible Customers, Respondent shall submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which final accounting and certification shall include, but not be limited to: (1) the amount paid to each payee, with the reasonable interest amount, if any, reported separately; (2) the date of each payment; (3) the check number or other identifier of the money transferred; (4) the amount of any returned payment and the date received; (5) a description of the efforts to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that Respondent has made payments from the Fair Fund to affected Eligible Customers 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 C. Dabney O’Riordan, Co-Chief, Asset Management Unit, Securities and Exchange Commission, Los Angeles Regional Office, 444 South Flower Street, Suite 900, Los Angeles, CA 90071, or such other person or address as the Commission staff may provide. 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 Fair 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.

D. Payments to the Commission referenced in Subsections C 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 RBC Capital Markets LLC as the Respondent in these proceedings, and the file number of these proceedings. A copy of the cover letter and check or money order must be simultaneously sent to C. Dabney O'Riordan, Co-Chief, Asset Management Unit, Securities and Exchange Commission, Los Angeles Regional Office, 444 South Flower Street, Suite 900, Los Angeles, CA 90071, or such other person or address as the Commission staff may provide.

By the Commission.

Vanessa A. Countryman
Secretary