

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 88387 / March 16, 2020

INVESTMENT ADVISERS ACT OF 1940
Release No. 5464 / March 16, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19730

In the Matter of

HSBC Securities (USA) Inc.,

Respondent.

**CORRECTED ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
SECTION 15(b) OF THE SECURITIES
EXCHANGE ACT OF 1934 AND 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 Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against HSBC Securities (USA) Inc. (“HSBC Securities” 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 Section 15(b) of the Exchange Act and 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 finds that:

Summary

This matter arises out of misrepresentations regarding how HSBC Securities compensated dual-registered investment adviser representatives ("IARs") in its Retail Banking and Wealth Management business. Between November 2015 and August 2017, HSBC Securities made false and misleading statements to current and prospective advisory clients and failed to disclose conflicts of interest concerning the factors HSBC Securities used to determine compensation for its IARs. In its Forms ADV Part 2A and Wrap Fee Program Brochures, HSBC Securities stated that IARs were not compensated based on fees for its advisory programs and that IARs were compensated based on non-financial factors. Contrary to its representations, HSBC Securities also considered several financial factors related to client accounts to determine its IARs' compensation, including the amount of advisory fees clients paid to HSBC Securities. Additionally, HSBC Securities 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 representations on IAR compensation. As a result of the conduct described above, HSBC Securities willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondent

1. **HSBC Securities (USA) Inc.** is a Delaware corporation headquartered in New York, NY. HSBC Securities has been registered as an investment adviser since 2005 and as a broker-dealer since 1969. In its Form ADV filed May 8, 2019, HSBC Securities reported discretionary and non-discretionary assets under management of \$3.1 billion.

Facts

2. HSBC Securities provides investment advisory, brokerage, and other services to retail clients in the United States through its Retail Banking and Wealth Management business ("RBWM"). HSBC Securities offers these services through approximately 200 IARs, known as Premier Wealth Advisors, Premier Relationship Advisors, or Financial Advisors. IARs are dually registered investment adviser and broker representatives of HSBC Securities.

3. HSBC Securities offered two programs to retail advisory clients, HSBC Spectrum ("Spectrum") and Managed Portfolio Account ("MPA"), by which it provided investment advisory services. Clients paid HSBC Securities a quarterly advisory fee for the Spectrum and MPA programs based on assets under management in the accounts, without paying commissions for activity within the advisory accounts.

4. Beginning in 2013, HSBC Securities began using a compensation framework pursuant to which IARs received a fixed salary with the possibility to earn a discretionary bonus on a quarterly and annual basis (“Incentive Framework”). HSBC Securities used several financial and non-financial factors, called key performance indicators (“KPIs”), to evaluate its IARs’ performance and determine their discretionary compensation. The Incentive Framework gave equal weight to financial and non-financial KPIs. One of the financial KPIs, “Recurring and Income Growth,” measured income to HSBC Securities from clients’ investment products, including the amount of Spectrum and MPA fees that the IAR generated across his clients’ advisory accounts.

5. HSBC Securities set performance expectations of IARs for three financial KPIs, which it called “KPI Minimum Standards.” For example, HSBC Securities set a KPI Minimum Standard for IARs to produce a certain dollar value of Recurring and Income Growth each month, which included the amount of Spectrum and MPA fees that the IAR generated across his clients’ advisory accounts. In determining an IAR’s discretionary compensation, HSBC Securities considered whether an IAR met his KPI Minimum Standards.

HSBC Securities’ Misleading Disclosures Concerning IAR Compensation

6. While its Customer Agreement disclosed that conflicts of interest “may” arise with respect to recurring income to the firm, HSBC Securities provided false and misleading disclosures to clients about its IARs’ conflicts because it stated that IARs did not receive compensation based on advisory fees and failed to disclose that IARs had a financial incentive to generate Spectrum and MPA advisory fees in their clients’ accounts because such fees were a factor in determining their discretionary bonuses.

7. HSBC Securities delivered its Form ADV Part 2A to current and prospective Spectrum and MPA clients and its Wrap Fee Program Brochure to current and prospective MPA clients. Between November 2015 and August 2017, HSBC Securities’ Form ADV Part 2A stated, “IARs are not compensated based on commissions or fees for the Spectrum, program or otherwise...” During that same time, HSBC Securities’ Wrap Fee Program Brochure similarly stated, “IARs are not compensated based on commissions or fees for the Spectrum and MPA, program or otherwise...” As set forth above, contrary to these representations, HSBC Securities considered the amount of advisory fees that an IAR’s Spectrum and MPA clients paid to HSBC Securities each quarter in determining the IAR’s compensation.

8. HSBC Securities’ Form ADV Part 2A also stated, “Individual variable pay decisions will consider the effective management of risk, compliance, quality and values, as well, as well [sic] as other factors...” HSBC Securities’ disclosure was misleading because it did not disclose that, in addition to the non-financial factors identified, it also considered the amount of Spectrum and MPA fees that IARs generated across their clients’ advisory accounts in determining their discretionary compensation.

Compliance Deficiencies

9. HSBC Securities failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder. HSBC Securities' written policies and procedures required that it fully disclose to advisory clients the existence of any potential or actual conflicts of interest concerning the advisory relationship with HSBC Securities. However, HSBC Securities did not disclose to Spectrum and MPA advisory clients the existence of potential or actual conflicts of interest associated with the advice clients would receive from its IARs and instead provided misleading disclosures regarding IARs' financial incentives.

Violations

10. Section 206(2) of the Advisers Act makes it unlawful for any investment 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. A violation of Section 206(2) 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)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.* As a result of the conduct described above, HSBC Securities willfully¹ violated Section 206(2).

11. 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 the rules adopted thereunder. As a result of the conduct described above, HSBC Securities willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent HSBC Securities' Offer.

Accordingly, pursuant to Section 15(b) of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

¹ “Willfully,” for purposes of imposing relief under Sections 203(e) of the Advisers Act and Section 15(b) of the Exchange 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).

- A. Respondent HSBC Securities 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 HSBC Securities is censured.
- C. Respondent HSBC Securities shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$725,000 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.
- D. 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 HSBC Securities (USA) Inc. 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, Co-Chief, Asset Management Unit, Los Angeles Regional Office, Securities and Exchange Commission, 444 South Flower Street, Suite 900, Los Angeles, CA, 90071.

E. 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
Secretary