

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5599 / September 30, 2020**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 34035 / September 30, 2020**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20105**

**In the Matter of**

**TRANSAMERICA ASSET  
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 AND SECTIONS 9(b) AND 9(f)  
OF THE INVESTMENT COMPANY 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”) and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Transamerica Asset Management, Inc. (“TAM” 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 and Sections 9(b) and 9(f) of the Investment Company 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<sup>1</sup> that:

#### Summary

1. These proceedings arise out of registered investment adviser TAM's material misstatements and omissions to investors related to the annual operating expenses of four money market funds (the "Funds") that TAM managed. Between January 1, 2016, and February 28, 2019 (the "Relevant Period"), TAM caused the Funds to reimburse amounts that TAM had previously waived and reimbursed to the Funds on a voluntary basis (hereinafter, "recaptured amounts"). As a result of TAM's recaptured amounts, the Funds charged expenses that exceeded their contractual limits and caused the Funds' investors to collectively incur millions of dollars in additional fund expenses. TAM omitted the recaptured amounts from a description of the Funds' annual operating expenses in the Funds' prospectuses as required by Form N-1A, thereby materially misstating the expenses that investors paid when buying and holding the Funds' shares. As a result, TAM willfully<sup>2</sup> violated Section 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder and Section 34(b) of the Investment Company Act.

2. The Commission is not imposing a penalty because TAM self-reported the above conduct, took prompt steps to remediate the violations, including ceasing to recapture its voluntarily-waived fees and reimbursed expenses and hiring a third-party consultant to quantify the harm to affected investors, and cooperated with the Commission staff's investigation.

#### Respondent

3. **Transamerica Asset Management, Inc.** (SEC File No. 801-53319), headquartered in Denver, Colorado, is registered with the Commission as an investment adviser. TAM is the sponsor and investment adviser of all series that are part of the Transamerica fund family ("TFF"), which consists of Delaware statutory trusts that are registered with the Commission as open-end management investment companies. According to its Form ADV filed on March 30, 2020, TAM reported having more than \$80 billion in assets under management as of December 31, 2019.

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<sup>1</sup> 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.

<sup>2</sup> "Willfully," for purposes of imposing relief under Section 203(e) of the Advisers Act and Section 9(b) of the Investment Company 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[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

## **Other Relevant Entities**

4. **The Funds.** The four TFF Funds related to these proceedings are: (i) Transamerica Government Money Market; (ii) Transamerica BlackRock Government Money Market VP; (iii) Transamerica Partners Government Money Market; and (iv) Transamerica Partners Institutional Government Money Market. The two Transamerica Partners Funds merged into Transamerica Government Money Market Fund in 2017.

## **Background**

### **TAM's Contractual and Voluntary Expense Limitation Agreements with the Funds**

5. Prior to and during the Relevant Period, TAM had contractual expense limitation agreements with the Funds whereby TAM agreed to waive fees and/or reimburse fund expenses to the extent necessary so that each Fund's total operating expenses did not exceed an agreed-upon percentage of the Fund's average net assets (hereinafter, the "expense cap"). The Funds disclosed the existence of these contractual expense limitation agreements and the corresponding Fund expense caps in the various fund filings, including the Funds' prospectuses, statements of additional information, and shareholder reports.

6. Prior to and during the Relevant Period, TAM also had voluntary expense limitation agreements with the Funds whereby TAM agreed to waive a portion of its fees and/or reimburse some fund expenses to prevent the Funds from experiencing a negative yield. Pursuant to these agreements, TAM was entitled to recapture any such waived fees or reimbursed expenses during the ensuing three years so long as the recaptured amounts did not result in negative yields for the Funds.

7. During the Relevant Period, TAM recaptured from the Funds amounts that it had previously waived or reimbursed under the voluntary expense limitation agreements. As a result of the recaptured amounts, the Funds, in some instances, exceeded their contractual expense caps, which caused investors in those Funds to collectively incur \$5,258,357.30 in additional fund expenses.

### **TAM's Material Misstatements and Omissions Concerning the Impact of the Recaptured Amounts on the Funds' Annual Operating Expenses**

8. Open-end management companies that register under the Investment Company Act and offer their shares under the Securities Act of 1933 are required to disclose in their prospectuses information specified by Form N-1A, which is then made available to the public. See Form N-1A, Introductory Paragraphs. According to Form N-1A, "[t]he purpose of the prospectus is to provide essential information about the Fund in a way that will help investors to make informed decisions about whether to purchase the Fund's shares described in the prospectus." Id., General Instructions, Section C.2(a). Therefore, "[d]isclosure in the prospectus should be designed to assist an investor in comparing and contrasting the Fund with other funds." Id., General Instructions, Section C.1(b).

9. In preparing its prospectus, a fund is required to include a fee table that describes the fees and expenses that an investor may pay if the investor buys and holds shares of the fund. See Form N-1A, Part A, Item 3. The fee table's "Annual Fund Operating Expenses" inform investors about the expenses that an investor pays each year as a percentage of the value of the investor's investment, and are broken out by a listing of "Management Fees," "Distribution [and/or Service] (12b-1) Fees," and "Other Expenses." According to the Form N-1A instructions, "Other Expenses" include "all expenses not otherwise disclosed in the table that are deducted from the Fund's assets or charged to all shareholder accounts." *Id.*, Part A, Item 3, Instruction 3(c)(i).

10. During the Relevant Period, TAM prepared the Funds' prospectuses, including their fee tables, and was responsible for ensuring that the prospectuses included accurate information in accordance with the requirements of Form N-1A. In preparing the prospectuses, however, TAM omitted the expenses associated with the amounts that TAM recaptured under the voluntary expense limitation agreements from the fee tables' "Other Expenses." In some instances during the Relevant Period, as a result of this omission, the fee tables failed to inform investors that the Funds exceeded their disclosed expense caps for the Funds' most recent fiscal year.

### **TAM's Policies and Procedures Deficiencies**

11. During the Relevant Period, TAM's written policies and procedures included instructions for preparing the Funds' prospectuses, including the prospectus fee tables, in accordance with the requirements of Form N-1A. TAM's policies and procedures explicitly stated that recaptured expenses were to be included within the "Other Expenses" line item. However, throughout the Relevant Period, TAM failed to implement these policies and procedures as they related to TAM's recapture of amounts previously waived or reimbursed pursuant to the voluntary expense limitation agreements.

### **TAM Self-Reported Its Conduct**

12. In July 2019, TAM self-reported its disclosure failures to the Commission staff. TAM also took prompt remedial action, including hiring a third-party consultant to quantify the harm to affected investors who incurred fund expenses in excess of the Funds' expense caps and ceasing its recapture from the Funds of any voluntarily-waived fees or reimbursed expenses. In addition, throughout the staff's investigation, TAM provided detailed factual summaries and made substantive presentations on key topics.

### **Violations**

13. Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder make it unlawful for any investment adviser to a pooled investment vehicle to make any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act and the rules thereunder. *SEC v. Steadman*, 967 F.2d 636, 647

(D.C. Cir. 1992). As a result of the conduct described above, TAM willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder.

14. Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require a registered investment adviser to, among other things, adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules. As a result of the conduct described above, TAM willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

15. Section 34(b) of the Investment Company Act makes it unlawful for any person to make any untrue statement of a material fact in any registration statement, or other document filed or transmitted pursuant to the Investment Company Act, or for any person so filing or transmitting to omit to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading. Establishing a violation of 34(b) of the Investment Company Act does not require proof of scienter. *In the Matter of Fundamental Portfolio Advisors, Inc.*, Advisers Act Rel. No. 2146, 2003 WL 21658248, at \*8 (July 15, 2003). As a result of the conduct described above, TAM willfully violated Section 34(b) of the Investment Company Act.

### **TAM's Remedial Efforts**

16. 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 Sections 203(e) and 203(k) of the Advisers Act and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder and Section 34(b) of the Investment Company Act.

B. Respondent is censured.

C. Respondent shall pay disgorgement and prejudgment interest totaling \$5,946,782.53 as follows:

- i. Respondent shall pay disgorgement of \$5,258,357.30 and prejudgment interest of \$688,425.23, consistent with the provisions of this Subsection C.

- ii. Within 10 days of the issuance of this Order, Respondent shall deposit \$5,946,782.53 (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.
- iii. Respondent shall be responsible for administering the Distribution Fund and may hire a professional to assist Respondent 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.
- iv. Respondent shall pay from the Distribution Fund to each affected Fund investor (“affected investor”) an amount representing the expenses above the applicable Fund expense cap incurred by the affected investor during the Relevant Period 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. No portion of the Distribution Fund shall be paid to any affected investor account in which Respondent, or any of its current or former officers or directors, has a financial interest.
- v. Respondent shall, within ninety (90) days from the date of this Order, submit a proposed Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, Respondent shall make itself available, and shall require any third-parties or professionals retained by Respondent to assist in formulating the methodology for its Calculation and/or administration of the Distribution Fund to be 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 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 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.
- vi. 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 affected investor. The Payment File should identify, at a minimum: (1) the name of each affected investor; (2) the exact amount of the payment to be made from the Distribution Fund to each affected investor; and (3) the amount of any *de minimis* threshold to be applied.

- vii. Respondent shall complete the disbursement of all amounts payable to affected investor accounts within ninety (90) days of the date that the Commission staff accepts the Payment File, unless such time period is extended as provided in Paragraph xi of this Subsection C. Respondent shall notify the Commission staff of the dates and the amounts paid in the initial distribution.
  
- viii. If Respondent is unable to distribute or return any portion of the Distribution Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor 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 x of this Subsection C is submitted to the Commission staff. 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 TAM as 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, Division of Enforcement, Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, CO 80294.

- ix. A Distribution Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondent shall be responsible for any and all tax compliance responsibilities associated with the Distribution Fund, including but not limited to tax obligations resulting from the Distribution 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.
- x. Within 150 days after Respondent completes the disbursement of all amounts payable to affected investors, Respondent shall return all undisbursed funds to the Commission pursuant to the instructions set forth in this Subsection C. Respondent shall then submit to the Commission staff a final accounting and certification of the disposition of the Distribution 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 Distribution Fund to affected investors in accordance with the Calculation approved by the Commission staff. The final accounting and certification shall be submitted under a cover letter that identifies TAM as Respondent in these proceedings and the file number of these proceedings to Kimberly L. Frederick, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, CO 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.
- xi. The Commission staff may extend any of the procedural dates set forth in Paragraphs ii through x of 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 the last day.

E. Respondent acknowledges that the Commission is not imposing a civil penalty based upon its cooperation in a Commission investigation and related enforcement action. If at any time following the entry of the Order, the Division of Enforcement (“Division”) obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to Respondent, petition the Commission to reopen this matter and seek an order directing that Respondent pay a civil money penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Vanessa A. Countryman  
Secretary