

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6893 / July 11, 2025

ADMINISTRATIVE PROCEEDING
File No. 3-22488

In the Matter of

**AMERICAN PORTFOLIOS
ADVISORS, 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 American Portfolios Advisors, Inc. (“Respondent” or “APA”).

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:

Summary

1. From at least August 1, 2020 to March 31, 2023 (the "Relevant Period"), Respondent, then a registered investment adviser, breached its fiduciary duty to certain of its advisory clients by failing to fully and fairly disclose the nature and extent of conflicts of interest associated with certain compensation paid to Respondent's affiliated broker-dealer, American Portfolios Financial Services, Inc. ("Affiliated Broker") by an unaffiliated clearing broker ("Clearing Broker A"). Affiliated Broker served as the introducing broker for transactions executed on behalf of Respondent's advisory clients and received compensation from Clearing Broker A related to execution, clearing and custody services provided to Respondent's clients by Clearing Broker A.

2. Additionally, Respondent overbilled certain clients by charging them advisory fees on alternative investments that were not supposed to be charged under their advisory agreements and also overbilled certain clients by failing to return pre-paid advisory fees on terminated accounts.

3. Respondent also provided backdated documents to Commission staff during a compliance examination.

Respondent

4. **American Portfolios Advisors, Inc.** (CRD # 112697), a Delaware corporation based in Holbrook, New York, was registered with the Commission as an investment adviser from April 8, 2002 until October 29, 2024 when its Form ADV-W to withdraw its registration with the Commission became effective. In August 2024, prior to withdrawing its registration, Respondent had approximately \$13 billion in regulatory assets under management.

Other Relevant Entity

5. **American Portfolios Financial Services, Inc.** (CRD # 18487), a Delaware corporation with its principal place of business in Holbrook, New York, was a registered broker-dealer from February 13, 1987 until December 14, 2024 when its Form BDW to withdraw its registration with the Commission became effective. Affiliated Broker was the introducing broker-dealer for Respondent's advisory clients.

Disclosure Failure

¹ 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.

6. By way of background, Clearing Broker A provided clearing and custody services for most of Respondent's advisory clients. Pursuant to a fully disclosed clearing agreement (the "Clearing Agreement") entered into between Clearing Broker A and Affiliated Broker in 2012, Affiliated Broker was permitted to receive compensation resulting from Clearing Broker A's transaction fees and other fees charged to Affiliated Broker's customers. As detailed in the corresponding fee schedule (the "2012 Fee Schedule"), Affiliated Broker applied its own markups for trade execution and account services to Clearing Broker A's ticket charges, outgoing account transfer fees, termination fees, inactive account fees, wire fees, and trade confirmation postage and handling fees (collectively, "fee markups"). Such fees were directly billed by Clearing Broker A to Affiliated Broker's customers, including Respondent's advisory clients, and Affiliated Broker's fee markups were remitted to Affiliated Broker.

7. In 2019, Clearing Broker A and Affiliated Broker executed an amended fee schedule to the Clearing Agreement, which became effective April 1, 2020 (the "2020 Fee Schedule"). Pursuant to the 2020 Fee Schedule, Clearing Broker A would continue to bill the same total fee amounts for certain services provided to Affiliated Broker's customers, including Respondent's clients. Those total fee amounts were the sum of Clearing Broker A's fees and Affiliated Broker's fee markups as laid out in the 2012 Fee Schedule. However, rather than remitting an amount equal to only Affiliated Broker's fee markups for certain trade execution and account services, the 2020 Fee Schedule provided that Clearing Broker A would remit the total fee amounts to Affiliated Broker. Affiliated Broker would pay Clearing Broker A an annual fee based on the total customer assets introduced by Affiliated Broker, including Respondent's clients.

8. During the Relevant Period, Respondent's Forms ADV Part 2A ("Brochure") contained general disclosures about conflicts of interest associated with participation in Clearing Broker A's transaction fees and other fees, including that Affiliated Broker "will be the executing broker for all transactions" and that this "may create a conflict of interest because [Affiliated Broker] and [Respondent] are affiliated firms and [Affiliated Broker] will be compensated for those transactions and shares in other custodial fees and or [sic] charges as it provides services to the client. This creates a conflict of interest because [Respondent] recommends the services of [Affiliated Broker] to clients. . . . For accounts held at [Clearing Broker A] client agrees that transactions for the Account will be executed through [Affiliated Broker]. [Affiliated Broker] participates in transaction revenue, FDIC sweep revenue and other fees received or charged by [Clearing Broker A]." The disclosure further stated Clearing Broker A "will determine the amount of transaction charges to be paid for each transaction or service, including custodial fees."

9. While Respondent disclosed in its Brochure that it had a conflict of interest, and further disclosed that it had an incentive to recommend use of Affiliated Broker as introducing broker and Clearing Broker A as clearing broker, it did not fully and fairly disclose the nature and extent of the conflict. It did not disclose that Affiliated Broker charged markups on various types of transaction and account service fees, resulting in additional costs to clients, and instead misleadingly indicated that Clearing Broker A "determine[d] the amount" of the fees billed. Pursuant to the 2020 Fee Schedule, Affiliated Broker retained the full amount of the fees billed and, in exchange, Affiliated Broker paid Clearing Broker A an annualized asset-based fee for those services. The Affiliated Broker's compensation for the trade execution and account services that it

provided was the difference between the fees billed including fee markups that Affiliated Broker received and the annualized asset-based fee that Affiliated Broker paid Clearing Broker A.

10. Respondent's March 6, 2023 Brochure was amended to disclose Affiliated Broker's ability to charge and set the applicable fee markups for Respondent's advisory clients with assets custodied with Clearing Broker A, and that such an arrangement presents a conflict of interest for Respondent.

Inaccurate Advisory Fee Billing

11. During the Relevant Period, Respondent erroneously billed and collected advisory fees on alternative investment positions, although no fees were supposed to be assessed on those positions. Respondent's Client Alternative Investment Disclosure Form provided, in relevant part, that the client acknowledges that alternative investment positions in their account are not liquid, are not priced on a regular basis, and will not be charged an advisory fee. Respondent maintained a list of alternative investment positions held by clients that were excluded from Respondent's advisory fee billing but failed to confirm that all relevant alternative investments were included on the list, which resulted in client overbilling.

12. During the Relevant Period, Respondent also collected prepaid quarterly advisory fees from certain clients but failed to develop processes to refund a pro rata portion of those prepaid fees when clients terminated their accounts. This failure was contrary to Respondent's client agreements, which specifically provided that clients would receive a pro rata refund of any prepaid quarterly advisory fees based upon the number of days remaining in the quarter after Respondent received the client's termination notice.

Respondent Provided Backdated Documents to the Commission

13. On May 7, 2021, Commission staff sent an initial request letter to Respondent's Chief Compliance Officer ("CCO") commencing a compliance examination of Respondent. Among other things, the staff noted in its request letter that it was conducting an examination of Respondent pursuant to Section 204 of the Advisers Act to assess Respondent's compliance with the federal securities laws and rules thereunder. The staff requested certain information from Respondent, including any reports documenting Respondent's most recent annual compliance review performed pursuant to Rule 206(4)-7 under the Advisers Act. Although documentation of an adviser's annual compliance review is not required under Rule 206(4)-7 under the Advisers Act, APA's policies and procedures required that a written annual compliance report be created and that the President and the CCO meet to discuss the report. Respondent's CCO subsequently informed Respondent's President that Commission staff had commenced a compliance examination of Respondent.

14. After receiving the request letter, rather than responding that Respondent did not have any records responsive to the staff's requests, Respondent's CCO created three documents which were styled as "Annual Compliance Calendars" and purported to memorialize contemporaneous annual compliance reviews for the years 2018, 2019, and 2020. These documents were laid out in a checklist-like format listing compliance items to be completed, the

frequency with which they should be completed, and a blank field to denote when the item had been completed, all of which were filled in by the CCO as completed during the relevant years. Each of the three documents was signed on the last page by Respondent's CCO and by Respondent's President and backdated to 2018, 2019, and 2020, respectively. Respondent's President signed and backdated the documents at the request of Respondent's CCO. Respondent, through its CCO, provided the backdated documents to Commission staff.

15. Subsequently, during testimony, Respondent's CCO voluntarily admitted that he had backdated the documents.

Respondent's Remedial Efforts

16. In determining to accept Respondent's offer of settlement, the Commission considered remedial acts undertaken by Respondent, including reimbursement of \$4,536,147 plus \$842,516.72 in interest to clients between December 2023 and February 2024 to address the issues described in this Order.

Violations

17. As a result of the conduct described above with respect to disclosure failures and inaccurate advisory fee billing, Respondent willfully violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to "engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client." Scienter is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of 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)).

18. As a result of the conduct described above with respect to the backdated compliance calendars, Respondent willfully violated Section 204(a) of the Advisers Act, which requires that investment advisers registered with the Commission maintain and preserve certain books and records and provides that all records of an investment adviser are subject to examination by the Commission, and Rule 204-2(a)(17)(ii) thereunder, which requires that registered investment advisers "make and keep true, accurate and current . . . [a]ny records documenting the investment adviser's annual review of . . . policies and procedures."

IV.

In view of the foregoing, the Commission deems it appropriate, 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 204(a) and 206(2) of the Advisers Act and Rule 204-2 thereunder.

B. Respondent is censured.

C. Respondent shall, within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of \$1,750,000.00 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 American Portfolios Advisors, 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 Celeste A. Chase, Assistant Director, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

D. 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