

September 12, 2019

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Mr. Tim Henseler  
Office Chief, Office of Enforcement Liaison  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Re: *In the Matter of Raymond James & Associates, Inc., et al.*

Dear Mr. Henseler:

This letter is submitted on behalf of Raymond James Financial, Inc. (“Raymond James Financial”) in connection with the settlement of the above-captioned administrative proceeding by the U.S. Securities and Exchange Commission (the “Commission”) with certain of Raymond James’s wholly-owned direct subsidiaries, Raymond James & Associates, Inc. (“RJA”), Raymond James Financial Services, Inc. (“RJFS”), and Raymond James Financial Services Advisors, Inc. (“RJFSA”). RJA, RJFS, and RJFSA are referred to herein collectively as “Raymond James.” The settlement will result in the entry of an administrative and cease-and-desist order against Raymond James (the “Order”), which is described below.

By virtue of the entry of the Order, Raymond James Financial will be an “ineligible issuer” pursuant to Rule 405 promulgated under the Securities Act of 1933 (the “Securities Act”). Raymond James Financial hereby requests that the Division of Corporation Finance (the “Division”) recommend, and that the Commission determine, that for good cause shown it is not necessary under the circumstances that Raymond James Financial be considered an “ineligible issuer” under Rule 405. Raymond James Financial requests that the Commission consider this waiver request simultaneously with the offer of settlement regarding the underlying enforcement recommendation. Raymond James Financial requests that this determination be effective upon the issuance of the Order.

**BACKGROUND**

Raymond James has submitted an Offer of Settlement and agreed to the entry of the Order, which was presented by the Staff to the Commission. The Order finds that Raymond James, at various times from at least January 2013 through May 2018 (“Relevant Period”), failed to conduct promised suitability reviews for certain advisory accounts, overvalued certain assets that resulted in charging excess advisory fees, failed to have a reasonable basis for recommending certain unit investment trust (“UIT”) transactions to brokerage customers, and failed to disclose the conflict of interest associated with earning greater compensation when

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recommending certain securities without providing applicable sales-load discounts to brokerage customers. The Order finds that Raymond James received advisory fees from those certain “inactive” advisory accounts. The Order also finds that Raymond James obtained commissions by means of recommendations that contained implied representations that Raymond James and its personnel had formed a reasonable basis for the recommendations when they had not, in fact, done so. In addition, the Order finds that Raymond James received additional compensation from certain brokerage customers because it did not provide certain disclosed rollover discounts. Lastly, the Order finds that Raymond James used an overvalued price to determine advisory fees and consequently overcharged clients.

The Order, among other things, finds that Raymond James violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. The Order censures Raymond James and directs Raymond James to cease and desist from committing or causing any violations and any future violations of the above-enumerated provisions. Additionally, the Order requires Raymond James to pay disgorgement, prejudgment interest, and a civil monetary penalty, collectively totaling \$15,171,113.81.

## DISCUSSION

In 2005, the Commission implemented various reforms to the registration, communications, and offering processes under the Securities Act (“Securities Offering Reform”).<sup>1</sup> As part of these reforms, the Commission revised Rule 405 by creating a new category of issuer, the “well-known seasoned issuer” (or “WKSI”). Under these reforms, WKSIs became eligible for several features that streamlined the offering process and provided WKSIs with greater certainty and flexibility in the registration process, including the ability to “file-and-go” (*i.e.*, eligibility for automatically-effective shelf registration statements) and “pay-as-you-go” (*i.e.*, the ability to pay filing fees as the issuer sells securities off the shelf). In addition, Securities Offering Reform provided WKSIs with greater flexibility concerning their offering communications, including the ability to use “free writing prospectuses” (“FWPs”) in advance of filing a registration statement and in connection with offering securities previously registered under a registration statement.

As part of Securities Offering Reform, the Commission also created another category of issuer under Rule 405, the “ineligible issuer.” An ineligible issuer is excluded from the category of “well-known seasoned issuer,” is ineligible to make communications by way of free writing prospectuses (except in limited circumstances) and does not have the ability to file-and-go or pay-as-you-go.<sup>2</sup>

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<sup>1</sup>See Securities Offering Reform, Securities Act Release No. 8591, Exchange Act Release No. 52,056, Investment Company Act Release No. 26,993, 70 Fed. Reg. 44,722, 44,790 (Aug. 3, 2005).

<sup>2</sup>See Securities Act Rules 164(e), 405 & 433, 17 C.F.R. §§ 230.164(e), 230.405 & 230.433.

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Rule 405 authorizes the Commission to determine, “upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.”<sup>3</sup>

The entry of the Order against Raymond James would render Raymond James Financial, as Raymond James’s parent company, an ineligible issuer under Rule 405 for a three-year period. As a result, absent a waiver from the disqualification, Raymond James Financial would lose its current status as a WKSI, and therefore would not have access to file-and-go and the other benefits available to WSIs or be able to use all of the types of free writing prospectuses that are permitted to WSIs under Rules 164 and 433.

For the reasons discussed below, denying Raymond James Financial the regulatory benefits available to WSIs under Securities Offering Reform would have an undue and disproportionate impact on Raymond James Financial, and would, in effect, unfairly impose an additional sanction on Raymond James Financial over and above those provided for in the Order.

### **REASONS FOR GRANTING A WAIVER**

Consistent with the framework outlined in the Division’s Revised Statement on Well-Known Seasoned Issuer Waivers issued on April 24, 2014, Raymond James Financial respectfully requests that the Commission determine that it is not necessary for Raymond James Financial to be considered an ineligible issuer and to be denied WSKI status as a result of the Order.

#### Nature of Violations and Duration:

As noted above, the conduct described in the Order relates to findings that Raymond James, during the Relevant Period, failed to conduct promised suitability reviews for certain advisory accounts, overvalued certain assets that resulted in charging excess advisory fees, failed to have a reasonable basis for recommending certain unit investment trust (“UIT”) transactions to brokerage customers, and failed to disclose the conflict of interest associated with earning greater compensation when recommending certain securities without providing applicable sales-load discounts to brokerage customers.

None of the conduct described in the Order (i) pertains to activities undertaken by Raymond James Financial in connection with its role as an issuer of securities (or any disclosure related thereto) or to its related filings with the Commission or (ii) otherwise involves fraud in connection with its offerings of its own securities. The conduct described in the Order relates to the conduct of Raymond James Financial’s subsidiaries and not to Raymond James Financial itself. The employees primarily responsible for the violations that are the subject of the Order were personnel within Raymond James. None of these individuals was responsible for, or had

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<sup>3</sup> Securities Act Rule 405, 17 C.F.R. § 230.405.

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any influence over, the disclosures of Raymond James Financial as issuers of securities or in connection with its filings with the Commission. Further, the conduct described in the Order does not relate to financial disclosures made by Raymond James Financial as an issuer of securities, and therefore should not cast doubt on the ability of Raymond James Financial to produce reliable disclosures to investors going forward.

The violations charged in the Order are not criminal in nature and are all non-scienter-based violations of the Securities Act, the Advisers Act, or rules thereunder. The Commission did not find that there were intentional or reckless violations of the Securities Act or other securities laws, such as the Securities Exchange Act of 1934 (the “Exchange Act”). Rather, the violations were negligence-based. As the Division has stated, an issuer’s burden to show good cause that a waiver under Rule 405 is justified is significantly greater when a matter involves a criminal conviction or scienter-based conduct; neither applies to Raymond James in the instant matter.<sup>4</sup>

The conduct described in the Order does not call into question the reliability, quality, or timeliness of current and future disclosures by Raymond James Financial as an issuer of securities because none of the conduct is related in any way to those disclosures or to its filings with the Commission. Raymond James Financial’s disclosure controls and procedures mandated by Rules 13a-14 and 15d-14 under the Exchange Act were not implicated in any way by the relevant conduct. Moreover, the ongoing assessment by Raymond James Financial of the need to make disclosures that are relevant to investors with respect to Raymond James Financial’s business, or to Raymond James Financial as an issuer of securities, was not deemed lacking in the Order or otherwise called into question by the conduct described in the Order.

In addition, there is no indication that the wrongdoing reflects that the leadership of Raymond James Financial condoned or chose to ignore the conduct, or otherwise established a “tone at the top” that would encourage or facilitate such wrongdoing. The Commission did not make findings of any misconduct by the board of directors, executive management, or other senior officers of Raymond James Financial. None of the directors or executive officers of Raymond James Financial were aware of, but ignored, the conduct described in the Order. The transactions described in the Order occurred within lines of business that are separate and distinct from the lines of business involved in the preparation of public disclosures by Raymond James Financial as an issuer of securities. The violations described in the Order stem from certain line of business and process issues rather than from misconduct of any specific individuals, and as described below, substantial actions have been taken to address and remedy those issues. In addition, no employees of Raymond James Financial are named in the Order, and the Order does not contain findings that any Raymond James Financial personnel were responsible for, or caused, the violations described in the Order.

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<sup>4</sup> Division of Corporation Finance, Revised Statement on Well-Known Seasoned Issuer Waivers (April 24, 2014), available at <http://www.sec.gov/divisions/corpfin/guidance/wksi-waivers-interp-031214.htm>.

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As a result, the ineligible issuer status of Raymond James Financial and the resulting loss of WKSJ status for Raymond James Financial is not required for the public interest or the protection of existing or potential investors in their securities and would be unduly and disproportionately severe in light of the nature of the conduct.

Remedial Steps:

Raymond James's remediation of these matters since the conduct described in the Order has gone beyond providing monetary compensation to impacted clients. In addition:

- Raymond James revised its policies and procedures with respect to inactive advisory accounts to align with a more holistic approach in how services and advice are provided to clients. Raymond James investment adviser representatives ("IARs") are responsible for reviewing and documenting the relevant factors that were taken into consideration when recommending an advisory relationship to a client and the factors considered in determining the appropriateness of an advisory program for a client. Further at least annually, IARs must conduct a review of each of their advisory relationships at the household level and document the fiduciary services that have been provided to the client. On an ongoing basis, members of an Advisory Supervision team request evidence of ongoing fiduciary services for households flagged for review; examine and evaluate the fiduciary services rendered; maintain documentation and reviewer notes of the review; and determine if the household, or select accounts within the household, should be converted to a non-FA managed account or brokerage account or closed. If Advisory Supervision determines that an account should be converted or closed due to insufficient evidence of fiduciary services being provided to the advisory household, it will reach out to the branch contact. If the branch contact does not comply with Advisory Supervision's request to convert or close an account, the Advisory Supervision team member will escalate the issue to the Director of Advisory Supervision.
- Raymond James also revised its policies and procedures related to supervision of UIT sales before the maturity date of the UIT ("short holds"). Raymond James had implemented a trade alert within Supervisory Workstation to identify such short holds (the "Short Hold Alert"). That alert was initially designed to compare the UIT sale date to the original purchase date and was programmed to trigger if a UIT was sold within 90 calendar days of the purchase date. Raymond James extended that timeframe from 90 days to 180 days, and in November 2017, from 180 days to 365 days. The Firm further enhanced this review as of January 2018 so that the Short Hold Alert would trigger if a UIT was sold 90 days or more prior to the maturity of the trust. And as of October 1, 2018, the Short Hold Alert was

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updated to trigger if a UIT is sold 31 or more days prior to the maturity of the UIT.

- Raymond James undertook an ambitious system buildout to address the way in which it incorporates UIT prices from its pricing vendor into its back-office systems.
- As of June 2017, UIT sponsors changed the UIT pricing structure to eliminate rollover discounts. Therefore, Raymond James clients no longer receive such discounts. Accordingly, no remediation to Raymond James's systems with respect to rollover discounts was necessary.
- Raymond James voluntarily retained consultants to comprehensively review its UIT transactions and advisory UIT valuation practices. These actions led Raymond James to self-report the short-hold transaction and UIT advisory fee conduct described in this Order.

### ***Previous Actions***

The Commission has previously granted Raymond James Financial waivers regarding its WKSJ status in the following instances:

- *In the Matter of Raymond James Financial Services Advisors, Inc.* (Mar. 11, 2019) related to RJFSA's breach of fiduciary duty and inadequate disclosures in connection with its mutual fund share class selection practices and the fees its related/affiliated broker and associated persons received pursuant to Rule 12b-1 under the Investment Company Act of 1940. This matter was self-reported to the Commission pursuant to the Share Class Selection Disclosure Initiative. The Commission settled with 79 investment advisers, including RJFSA, on the same day.
- *In the Matter of Raymond James & Associates, Inc.* (Sept. 8, 2016) related to RJA's failure to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act relating to advisory client commissions.
- *In the Matter of Raymond James Financial, Inc.* (June 18, 2015) related to the failure by Raymond James Financial to conduct adequate due diligence on certain municipal securities offerings in connection with the Municipalities Continuing Disclosure Cooperation Initiative. This matter was self-reported to

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the Commission and the Commission settled with 36 underwriters, including Raymond James Financial.

- *In the Matter of Raymond James & Associates, Inc. and Raymond James Financial Services, Inc.* (July 1, 2011) related to auction rate securities sales practices.

None of the conduct that was the subject of these previous waiver requests, or the conduct described in the Order, related to the conduct of Raymond James Financial as an issuer of securities or to its filings with the Commission. In addition, Raymond James and its affiliates have taken remedial steps relating to the conduct described in the respective settlement orders, such as revisions to policies and procedures and compliance with certain undertakings in the settlements, to help prevent such conduct occurring again. Taking into account the nature of the conduct and the remediation steps, Raymond James Financial does not believe that the prior conduct or the conduct that is the subject of this WKSI waiver request calls into question the adequacy of Raymond James Financial's internal controls or the ability of Raymond James Financial to produce reliable disclosure in connection with issuances of securities or its filings with the Commission.

#### Impact on Issuer

The Division's Revised Statement indicates that it will "assess whether the loss of WKSI status would be a disproportionate hardship in light of the nature of the issuer's conduct." The Order is the result of substantial negotiations between Raymond James and the Commission staff. As described above, under the Order, Raymond James will be subject to a cease-and-desist order and pay substantial amounts as a penalty. In addition, Raymond James undertook a number of remedial efforts, which, as mentioned above, included voluntarily retaining consultants to comprehensively review its UIT transactions and advisory UIT valuation practices. Absent a waiver, Raymond James Financial believes the ineligible issuer status of Raymond James Financial as a result of the Order would have an unduly and disproportionately severe impact and impose a significant burden on Raymond James Financial.

As the Commission explained when it adopted Securities Offering Reform, as a result of the active participation of WKSIs in the markets and, among other things, the wide following of these issuers by market participants and the media, the Commission deemed it appropriate to provide WKSIs with flexibility with respect to the registration process and certain offering communications. This regulatory flexibility afforded to WKSIs is a significant benefit, the absence of which, while not foreclosing access to the capital markets, is an undue hardship for Raymond James Financial in light of the nature of the conduct described in the Order and, in effect, an additional sanction above and beyond those provided for in the Order. As an ineligible issuer, Raymond James Financial would, among other things, lose the ability to:

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- file automatic shelf registration statements to register an indeterminate amount of securities;
- offer additional securities of the classes covered by a registration statement without filing a new registration statement;
- include certain information omitted from the registration statement at the time of effectiveness through the filing of prospectus supplements or incorporated Exchange Act reports;
- take advantage of the “pay as you go” filing fee payment process;
- qualify a new indenture under the Trust Indenture Act of 1939, if needed, without filing or having the Commission declare effective a new registration statement; and
- use free writing prospectuses other than one that contains only a description of the terms of the offered securities or the offering itself.

Raymond James Financial maintains an automatic shelf registration statement in order to facilitate timely issuance of securities responsive to market conditions. Raymond James Financial last issued securities under its automatic shelf registration statement in May 2017, when it issued \$500 million institutional debt, the proceeds of which were used for working capital and general corporate purposes. In July 2016, Raymond James Financial used its automatic shelf registration statement to issue \$800 million institutional debt for the same purposes. In March 2012, Raymond James Financial issued \$250 million institutional debt, \$350 million retail debt and \$350 million equity securities, each of which were directly related to and substantially funded Raymond James Financial’s acquisition of Morgan Keegan, and in April 2011, Raymond James Financial used its automatic shelf registration statement to issue \$250 million institutional debt in connection with buying back auction rate securities from clients. Over the last nine years, Raymond James Financial has utilized its automatic shelf registration statement for all of its issuances of securities.

The automatic shelf registration process provides Raymond James Financial with a critical means of access to the capital markets in a timely and efficient manner. Raymond James Financial, like other institutions, faces changing regulatory and market conditions and uncertainties. Without the ability to utilize an automatic shelf registration statement, Raymond James Financial may be unable to react quickly to such changing requirements and conditions, which could lead to investor harm. Furthermore, if Raymond James Financial was unable to avail itself of the automatic shelf registration and the other benefits available to a WKSI, it would put Raymond James Financial at a disadvantage compared to other issuers.



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In addition, as an ineligible issuer, Raymond James Financial would be unable to use FWP's other than ones that contain only a description of the terms of the securities in the offering or the offering itself. While historically Raymond James Financial has utilized only term sheet FWP's, a restriction on Raymond James Financial's ability to use FWP's other than such term sheet FWP's would significantly curtail important channels of communication to investors and reduce flexibility in responding to market practices and demands on similarly situated issuers by placing Raymond James Financial at a competitive disadvantage.

In light of these considerations, Raymond James Financial believes subjecting Raymond James Financial to the disadvantages of ineligible issuer status is not necessary under the circumstances, and good cause exists to determine that Raymond James Financial should not be considered an ineligible issuer under Rule 405 as a result of the Order. The inability of Raymond James Financial to take advantage of the regulatory benefits granted to WKSIs is a disproportionate hardship in light of the nature of the conduct that is the subject of the Order. Denial of this request would hinder necessary access to the capital markets by significantly increasing the time, labor, and cost of such access, a result that Raymond James Financial believes would be inequitable to its shareholders and its clients. More importantly, because the conduct described in the Order in no way relates to the ability of Raymond James Financial to produce reliable disclosures in its role as an issuer of securities, granting a waiver in this instance is consistent with the public interest and the protection of investors.

We respectfully request the Commission to grant the waiver requested hereby.

Sincerely,



Paul R. Eckert