UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10789 / June 2, 2020

SECURITIES EXCHANGE ACT OF 1934
Release No. 88996 / June 2, 2020

INVESTMENT ADVISERS ACT OF 1940
Release No. 5515 / June 2, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19820

In the Matter of

WILLIAM VESCIO,

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 SECTIONS 203(f) 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 8A of the Securities Act of 1933 ("Securities Act"), Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), against William Vescio ("Vescio" 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 him 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 8A of the Securities Act of 1933, Section 15(b) of the Securities Exchange Act of 1934, Sections 203(f) 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[1] that:

Summary

1. These proceedings arise out of breaches of fiduciary duty by William Vescio, the owner and president of Vescio Asset Management, LLC ("VAM"), an entity providing advisory services and, through Bryan Funding, Inc. ("Bryan Funding"), a registered broker-dealer, brokerage services to Pennsylvania and West Virginia municipal and county pension and employee benefit plans (each a "Client" and collectively the "Clients"), in connection with his mutual fund share class selection practices and his receipt of fees pursuant to Rule 12b-1 under the Investment Company Act of 1940 ("12b-1 fees"). From January 2016 to March 2019 (the "Relevant Period"), Vescio purchased, recommended, or held for Clients a mutual fund share class that charged higher 12b-1 fees instead of a lower-cost share class of the same funds that was available to Clients. Vescio benefitted from the increased 12b-1 fees he received in connection with these investments. Vescio failed to adequately disclose the conflicts of interest related to his receipt of 12b-1 fees and his selection of a mutual fund share class that pays such increased fees. Vescio also, by causing the Clients to invest in a fund share class that charged higher 12b-1 fees when a share class of the same funds that presented a more favorable value for these Clients under the particular circumstances in place at the time of the transactions was available to the Clients, breached his duty to seek best execution for those transactions.

2. For certain Clients, when making fee disclosures, Vescio negligently failed to disclose to these Clients that they were paying 12b-1 fees in addition to the mutual funds' other underlying expenses. These inaccurate disclosures gave the misleading impression that the overall fees were lower than they actually were.

3. As a result of this conduct, Vescio willfully violated Section 206(2) of the Advisers Act and Sections 17(a)(2) and 17(a)(3) of the Securities Act.

Respondent

4. **William Vescio**, age 66, is a resident of Sewickley, Pennsylvania. Vescio is an investment adviser representative of Bryan Advisory Services, LLC, an investment adviser registered with the Commission, who provided advisory services through his entity, VAM. During the Relevant Period, Vescio was a registered representative of Bryan Funding, Inc., formerly a broker-dealer registered with the Commission. He holds Series 7 and 63 licenses.

[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.

Other Relevant Entities

5. **Vescio Asset Management, LLC**, a Pennsylvania limited liability company located in Sewickley, Pennsylvania, is an unregistered entity that provides advisory services through Bryan Advisory Services. Vescio is the sole owner and president. During the Relevant Period, VAM provided brokerage services through Bryan Funding.

6. **Bryan Advisory Services, LLC**, located in Canonsburg, Pennsylvania, has been registered as an investment adviser with the Commission since May 23, 2019. During the Relevant Period, Bryan Advisory Services was a Pennsylvania registered investment adviser.

7. **Bryan Funding, Inc.**, located in Canonsburg, Pennsylvania, was a broker-dealer registered with the Commission until December 15, 2019, when its withdrawal of its registration went effective.

Background

8. Mutual funds typically offer investors different types of shares or "share classes." Each share class represents an interest in the same portfolio of securities with the same investment objective. The primary difference among the share classes is the fee structure.

9. For example, some mutual fund share classes (e.g., Class C shares) charge 12b-1 fees to cover certain costs of fund distribution and sometimes shareholder services. These recurring fees, which are included in a mutual fund's total annual fund operating expenses, vary by share class, but typically range from 25 to 100 basis points. They are deducted from the mutual fund's assets on an ongoing basis and paid to the fund's distributor or principal underwriter, which generally remits the 12b-1 fees to the broker-dealer that distributed or sold the shares.

10. Many mutual funds also offer share classes that charge lower 12b-1 fees (e.g, "Class A" shares). An investor who holds Class A shares of a mutual fund will pay lower 12b-1 fees than an investor who holds Class C shares, but may be subject to up-front or back-end sales charges; such charges may be waived for certain other eligible investors. An investor who holds Class A shares of a mutual fund will usually pay lower total annual fund operating expenses over time – and thus will generally earn higher returns – than one who holds a share class of the same fund that charges higher 12b-1 fees.

11. During the Relevant Period, Vescio advised Clients to purchase or hold Class C mutual fund shares that charged higher 12b-1 fees when lower-cost Class A shares of those same funds were available to those Clients.[2] Bryan Funding received 12b-1 fees and paid Vescio hundreds of thousands of dollars out of those fees, which he would not have received if his Clients had been invested in the available lower-cost share class.

[2] Clients were not eligible to purchase "Institutional Class" or "Class I" shares which do not charge 12b-1 fees.

Vescio's Mutual Fund Share Class Selection Practices

12. As VAM's owner, Vescio is in the business, for compensation, of making investment decisions for Clients, which consist of Pennsylvania and West Virginia municipal and county pension and employee benefit plans.

13. During the Relevant Period, each of Vescio's Clients maintained a brokerage account at a Fund Complex that invested exclusively in affiliated mutual funds. Vescio had full discretionary trading authority in the accounts and conducted trades on behalf of his Clients. Through the accounts, and within the Clients' investment guidelines, Vescio selected the particular mutual funds and the share class for each of his Clients to invest in.

14. During the Relevant Period, Vescio had Clients sign an Investment Management Agreement that designated VAM as the "investment manager to manage the fund assets."

15. Vescio provides a number of services to his Clients in addition to the periodic buying and selling of mutual funds. Vescio meets with the boards of the municipal and county pension and employee benefit plans on a quarterly basis to review their accounts, provides daily monitoring of the accounts, provides monthly cash management services to ensure that Clients can meet their pension payout requirements, provides data to and assists the Clients' actuaries, and assists in the annual audits of Client accounts by state agencies.

16. The Fund Complex offers different fund share classes for its mutual funds, including Class A and Class C shares. Class A shares are subject to an up-front sales charge in addition to 12b-1 fees of .25 percent. For Class A shares, the up-front sales charge is waived for Clients holding investments over $1 million. Class C shares do not have any up-front sales charge, but have higher 12b-1 fees of one percent. Both Class A and Class C shares are subject to back-end contingent deferred sales charges ("CDSC") on redemptions made less than 18 months and 12 months, respectively, after purchase of the shares.

17. As municipal and county pension funds and employee benefit plans, the Clients are long-term investors with invested assets of over $1 million and thus were not subject to an up-front sales charge for the purchase of Class A shares. Thus, for the Clients, the only difference in Class A and Class C shares is in the amount of the 12b-1 fees (one percent vs. .25 percent).

18. During the Relevant Period, Vescio purchased, recommended or held, on behalf of Clients, Class C shares that charged higher 12b-1 fees when the Clients were otherwise eligible to invest in a lower-cost share class of those same funds. Vescio did not provide Clients the option of investing in Class A shares but instead placed them in Class C shares with higher 12b-1 fees.

19. Bryan Funding received 12b-1 fees from the mutual funds in which the Clients invested, and passed 90 percent of those fees on to Vescio directly. Vescio therefore received fees in an amount greater than he would have if the Clients had been invested in Class A shares. Vescio's compensation consisted exclusively of the 12b-1 fees generated from the purchase of Class C shares. Vescio did not receive commissions for trades or investment advisory fees from the

Clients.

Disclosure Failures

20. Vescio did not disclose his receipt of compensation from selecting Class C shares for most Clients. In acting as an investment adviser, Vescio was obligated to disclose all material facts to his Clients, including any conflicts of interest between himself and his Clients that could affect the advisory relationship and how those conflicts could affect the advice Vescio provided his Clients. To meet this fiduciary obligation, Vescio was required to provide his Clients with full and fair disclosure that is sufficiently specific so that they could understand the conflicts of interest concerning Vescio's advice about investing in different classes of mutual funds and could have an informed basis on which they could consent to or reject the conflicts. Vescio did not adequately disclose all material facts regarding the conflict of interest that arose when he invested Clients in a share class that would generate higher 12b-1 fee revenue for Vescio while a share class of the same fund was available that would not provide Vescio with that additional compensation.

21. For two Clients who explicitly requested that Vescio disclose the fees charged, Vescio negligently failed to include 12b-1 fees, a portion of which he was receiving. For example, for one Client that required quarterly fee reports, Vescio excluded 12b-1 fees from all reports for a number of months. For the other Client, Vescio reported a purported total fee amount that failed to include 12b-1 fees. These inaccurate disclosures gave the misleading impression that the fees for investing in mutual funds with Vescio were lower than what Clients actually paid.

Best Execution Failures

22. An investment adviser's fiduciary duty includes, among other things, an obligation to seek best execution for client transactions.[3]

23. By causing Clients to invest in a fund share class that charged 12b-1 fees when a share class of the same funds was available to the Clients that presented a lower cost (and thus more favorable value) under the particular circumstances in place at the time of the transactions, Vescio violated his duty to seek best execution for those transactions.

Violations

24. As a result of the negligent conduct described above, Vescio willfully[4] violated Section

[3] *See, e.g.*, Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 and Related Matters, Exchange Act Rel. No. 23170 (Apr. 28, 1986).

[4] "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 203(f) 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[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

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 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)).

25. As a result of the negligent conduct described above, Vescio willfully violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibits 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 practice or course of business which operates or would operate as a fraud or deceit in the offer or sale of securities, respectively. 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).

Vescio's Remedial Efforts

26. In determining to accept the Offer, the Commission considered the remedial acts taken by Vescio. This includes entering into new investment advisory agreements with all of the Clients and ending the practice of receiving or benefitting from 12b-1 fees in or about April 2019, resulting in generally lower costs for the Clients.

Undertakings

27. Respondent has undertaken to:

a. Within 30 days of the entry of this Order, notify the Clients of the settlement terms of this Order in a clear and conspicuous fashion.

b. Within 40 days of the entry of this Order, certify, in writing, compliance with the undertaking set forth above. The certification shall provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The certification and supporting material shall be submitted to Scott A. Thompson, Assistant Regional Director, Securities and Exchange Commission, Division of Enforcement, 1617 John F. Kennedy Blvd., Suite 520, Philadelphia, PA 19103, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

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, Sections 15(b) of the Exchange

Act, and Sections 203(f) 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 Section 206(2) of the Advisers Act and Sections 17(a)(2) and 17(a)(3) of the Securities Act.

B. Respondent is censured.

C. Respondent shall pay disgorgement of $275,000, prejudgment interest of $7,631 and civil penalties of $40,000 to the Clients, consistent with the provisions of this Subsection C. Payment shall be made in the following four (4) installments: (1) $50,000 within 10 days of the entry of the Order; (2) $100,631 within one year of the entry of the Order; (3) $86,000 within two years of the entry of the Order; and (4) $86,000, plus any remaining post-order interest, within three years of the entry of the Order (the "Payment Dates"). Payments shall be applied first to post-order interest, which accrues pursuant to SEC Rule of Practice 600 and pursuant to 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission. If any particular Client is no longer a Client of Respondent on a Payment Date, that payment and all future payments owed to that Client under this Order, including post-order interest, shall be paid to the Client as they become due.

(i) On each Payment Date set forth above, Respondent shall deposit the payment amount into an escrow account at a financial institution not unacceptable to the Commission staff (the "Fair Fund") and Respondent shall provide evidence of such deposit in a form acceptable to the Commission staff. If timely deposit is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600[17 C.F.R. § 201.600].

(ii) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties, disgorgement, and prejudgment interest referenced in this Subsection C. 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.

(iii) Respondent shall be responsible for administering the Fair Fund and may hire a professional not unacceptable to the staff of the Commission, at his own cost, 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.

(iv) Respondent shall, within 30 days of each Payment Date, distribute the amount from the Fair Fund to each Client an amount representing a portion of the 12b-1 fees attributable to the Client during the Relevant Period pursuant to a disbursement calculation (the "Calculation") provided by the Commission staff in accordance with this Subsection C (the "Distribution"). The Calculation shall identify: (1) the name of each Client and (2) the exact amount of the payment to be made from the Fair Fund to each Client. No portion of the Fair Fund shall be paid to any Client account in which Respondent has a financial interest.

(v) Respondent shall disburse all amounts payable to Clients in accordance with the Payment Dates unless such time period is extended as provided in Paragraph (x) of this Subsection C. If, after Respondent's reasonable efforts to distribute the Fair Fund pursuant to the Calculation, Respondent is unable to distribute any portion of the Fair Fund for good cause, including factors beyond Respondent's reasonable 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 the funds is complete and before the final accounting provided for in Paragraph (viii) below is submitted to Commission staff. Any such payment shall be made in accordance with Paragraph (xi).

(vi) A Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§ 1.468B.1-1.468B.5. Respondent agrees to be responsible for all tax compliance responsibilities associated with distribution of the Fair Fund, including, but not limited to, tax obligations resulting from the Fair 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 any such professional services shall be borne by Respondent and shall not be paid by the Fair Fund.

(vii) Within 45 days after each Distribution, Respondent shall submit to the Commission staff a certification of the disposition of the Fair Fund (the "Certification"). The Certification shall include, but not be limited to: (1) the amount paid to each Client; (2) the date of each payment; (3) the check number or other identifier of money transferred or credited to each Client; (4) the amount of any returned payment and the date received; (5) a description of any effort to locate

a Client 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 Clients in accordance with the Calculation provided by the Commission staff. Respondent shall submit the Certification, together with proof and supporting documentation of such payment in a form acceptable to the Commission staff, under a cover letter that identifies William Vescio as the Respondent in these proceedings and the file number of these proceedings to Scott A. Thompson, Assistant Regional Director, Securities and Exchange Commission, Division of Enforcement, 1617 John F. Kennedy Blvd., Suite 520, Philadelphia, PA 19103, or such other address as the Commission staff may provide. Any and all supporting documentation for the Certification shall be provided to the Commission staff upon request, and Respondent shall cooperate with any additional requests by the Commission staff in connection with the Certification.

(viii) Within 45 days after Respondent completes the distribution of all amounts payable to the Clients ("Final Distribution"), Respondent shall return all undisbursed funds to the Commission pursuant to the instruction set forth in Paragraph (v) of this Subsection C. Respondent shall then submit to the Commission staff a final accounting and Certification of the disposition of the Fair Fund for Commission approval. The final accounting shall be in a format to be provided by the Commission staff. The final accounting and Certification for the Final Distribution shall include, but not be limited to: (1) the final amount paid to each Client; (2) the date of each payment; (3) the check number or other identifier of money transferred or credited to each Client; (4) the amount of any returned payment and the date received; (5) a description of any effort to locate a Client 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 Clients in accordance with the Calculation provided by the Commission staff for the Final Distribution. Respondent shall submit the final accounting and Certification, together with proof and supporting documentation of such payment in a form acceptable to Commission staff, under a cover letter that identifies William Vescio as the Respondent in these proceedings and the file number of these proceedings to Scott A. Thompson, Assistant Regional Director, Securities and Exchange Commission, Division of Enforcement, 1617 John F. Kennedy Blvd., Suite 520,Philadelphia, PA 19103, or such other address as the Commission staff may provide. Any and all supporting documentation for the accounting and Certification for the Final Distribution shall be provided to the Commission staff upon request, and Respondent shall cooperate with any additional requests by the Commission staff in connection with the accounting and Certification.

(ix) After Respondent has submitted the final accounting to the Commission staff, the staff shall submit the final accounting to the Commission for approval and shall request Commission approval to send any undistributed amount to the United States Treasury.

(x) The Commission staff may extend any of the procedural dates set forth in Paragraphs (iv) through (viii) of this Subsection C for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

(xi) Respondent's transfer of any undistributed funds to the Commission for transmittal to the United States Treasury must be made in one of the following ways:

(a) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(b) 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

(c) 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 Respondent 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 Scott A. Thompson, Assistant Regional Director, Securities and Exchange Commission, Division of Enforcement, 1617 John F. Kennedy Blvd., Suite 520, Philadelphia, PA 19103, or such other address as the Commission staff may provide.

D. Respondent shall comply with the undertakings enumerated in Section III, paragraphs 27.a and 27.b above.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary