

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6686 / September 9, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22097

In the Matter of

TS BANK d/b/a
CALLAHAN FINANCIAL
PLANNING

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 TS Bank d/b/a Callahan Financial Planning (“Callahan Financial” 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, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

1. This matter involves failures by Callahan Financial, a registered investment adviser, to comply with Advisers Act Rule 206(4)-1 (the "Marketing Rule"). Specifically, after the compliance deadline for the Marketing Rule on November 4, 2022, and continuing through March 19, 2024 (the "Relevant Period"), Callahan Financial disseminated an advertisement containing an untrue statement of material fact regarding Callahan Financial's purported membership in a non-existent organization called "Fiduciary Firm." In addition, Callahan Financial disseminated an advertisement in which it claimed Callahan Financial provided investment advice with "no conflict of interest" without providing any context for this claim, notwithstanding Callahan Financial recognizing various conflicts of interest inherent in its role as an investment adviser, including conflicts of interest disclosed in Callahan Financial's Form ADV Part 2A brochure. As a result, Callahan Financial violated Section 206(4) of the Advisers Act and Rule 206(4)-1(a) thereunder.

Respondent

2. Respondent Callahan Financial is an Iowa corporation with its principal place of business in Omaha, Nebraska. Callahan Financial has been registered with the Commission as an investment adviser since April 1, 2021. In its Form ADV dated March 30, 2024, Callahan Financial reported that it had approximately \$248 million in regulatory assets under management.

Facts

3. On December 22, 2020, the Commission adopted significant amendments to Advisers Act Rule 206(4)-1, which governs marketing by Commission-registered investment advisers. *See Investment Adviser Marketing*, Release No. IA-5653 (Dec. 22, 2020) (effective May 4, 2021) ("Adopting Release"). The Commission set a deadline of November 4, 2022, eighteen months after the amendments' effective date of May 4, 2021, for registered investment advisers to come into compliance with the Marketing Rule. *See id.* at 252.

4. Under the Marketing Rule, registered investment advisers' advertisements may not include any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading. *See* Advisers Act Rule 206(4)-1(a)(1).

5. In addition, under the Marketing Rule, registered investment advisers are prohibited from including in advertisements any material statement of fact that the adviser does not have a reasonable basis for believing it will be able to substantiate upon demand by the Commission. *See* Advisers Act Rule 206(4)-1(a)(2).

6. The Marketing Rule defines an "advertisement," in pertinent part, to include "[a]ny direct or indirect communication an investment adviser makes to more than one person . . . that offers the investment adviser's investment advisory services with regard to securities to

prospective clients . . . or offers new investment advisory services with regard to securities to current clients.” Advisers Act Rule 206(4)-1(e)(1).

7. During the Relevant Period, Callahan Financial published communications on its public website at <https://callahanplanning.com> that constituted “advertisements” because they offered Callahan Financial’s investment advisory services with regard to securities to prospective clients and offered new investment advisory services with regard to securities to current clients. As the communications were published on Callahan Financial’s public website, they were made to more than one person.

8. During the Relevant Period, Callahan Financial disseminated an advertisement on its public website containing an untrue statement of a material fact. Specifically, Callahan Financial published an advertisement on its website in which it described Callahan Financial as a “Member” of “Fiduciary Firm.” However, Callahan Financial was not a “Member” of “Fiduciary Firm,” as “Fiduciary Firm” is a non-existent organization. Callahan Financial’s advertisement included a purported logo for this non-existent organization.

9. In addition, during the Relevant Period, Callahan Financial disseminated an advertisement on its public website containing the material statement of fact that Callahan Financial “serve[s] individuals and institutions independently, with no conflict of interest” without providing any context for this claim. However, Callahan Financial has recognized various conflicts of interest inherent in its role as an investment adviser, including conflicts of interest disclosed in Callahan Financial’s Form ADV Part 2A brochure. As a result, Callahan Financial lacked a reasonable basis for believing it would be able to substantiate upon demand by the Commission the material statement of fact in its advertisement that “[w]e serve individuals and institutions independently, with no conflict of interest.”

Violations

10. As a result of the conduct described above, Callahan Financial willfully¹ violated Section 206(4) of the Advisers Act and Rule 206(4)-1(a) thereunder.

¹ “Willfully,” for purposes of imposing relief under Section 203(e) 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).

Undertakings

11. Respondent has undertaken to:

a. Within 45 days of the entry of this Order, review its advertisements and confirm that the advertisements Callahan Financial is presently disseminating comply with the requirements of the Marketing Rule.

b. Within 50 days of the entry of this Order, certify, in writing, compliance with the undertakings ordered pursuant to Section IV.C. below. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Colin D. Forbes, Assistant Director, Asset Management Unit, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 24th Floor, Boston, MA 02110, or such other address as the Commission 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.

c. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates 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.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Callahan Financial'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 Section 206(4) of the Advisers Act and Rule 206(4)-1 thereunder.

B. Respondent is censured.

C. Respondent shall comply with the undertakings enumerated in Section III, paragraphs 11.a and 11.b above.

D. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$85,000 to the Commission for transfer to the general fund of the United States Treasury, subject to the Securities Exchange Act of 1934 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 Callahan Financial as a Respondent in these proceedings, and the file number of the proceedings; a copy of the cover letter and check or money order must be sent to Colin D. Forbes, Assistant Director, Asset Management Unit, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 24th Floor, Boston, MA 02110, or such other address as the Commission staff may provide.

E. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary