UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6709 / September 19, 2024

INVESTMENT COMPANY ACT OF 1940
Release No. 35325 / September 19, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22144

In the Matter of **MACQUARIE INVESTMENT MANAGEMENT BUSINESS TRUST,** **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 Macquarie Investment Management Business Trust ("MIMBT" or "Respondent").

II.

In anticipation of the institution of these proceedings, MIMBT 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[1] that:

Summary

1. These proceedings involve MIMBT's Absolute Return Mortgage-Backed Securities strategy (the "Strategy"), a fixed income investment strategy primarily invested in U.S. agency mortgage-backed securities ("MBS"), treasury futures, and agency collateralized mortgage obligations ("CMOs"). From January 2017 through April 2021 (the "Relevant Period"), MIMBT served as the adviser or sub-adviser to twenty advisory clients with exposure to some or all of the Strategy's investments, including eleven U.S.-registered investment companies, each a retail mutual fund ("RICs"), and nine unregistered investment vehicles (the "Unregistered Investment Vehicles"), including four private investment funds, each a pooled investment vehicle as defined in Rule 206(4)-8 under the Advisers Act ("Unregistered Pooled Investment Vehicle") (collectively, the "Strategy Accounts").

2. During the Relevant Period, MIMBT was responsible for pricing all Strategy-related investments and used those prices for its daily client performance reporting. MIMBT engaged an independent third-party pricing service ("Pricing Vendor") to provide evaluated marks for all Strategy-related securities. The Pricing Vendor's disclosures stated that its bid-side evaluations represented its expectation of what the holder would receive in an orderly transaction for an institutional round lot position under current market conditions ("Pricing Vendor Marks"). While there is no standard definition regarding what constitutes an odd lot or a round lot, for purposes of the findings in this Order, MIMBT evaluated an institutional round lot for the Relevant CMO positions as having at least $1 million current value. The Pricing Vendor specifically disclosed that it did not provide separate evaluations for odd lot positions.

3. The misconduct at issue involves interest only and inverse interest only (collectively "IO") and last cash flow ("LCF") bonds (collectively, the "Relevant CMOs"). During the Relevant Period, MIMBT caused the Strategy Accounts to purchase approximately 4900 Relevant CMO positions, 90% of which were largely illiquid, odd lot positions (*i.e.*, small-sized positions). Odd lot positions in the Relevant CMOs typically traded at a significant discount to round lot positions (*i.e.*, institutional, larger-sized positions) of the same bonds.

4. During the Relevant Period, MIMBT and the RICs used round lot Pricing Vendor Marks to value the odd lot Relevant CMO positions. MIMBT did not have a reasonable basis to believe that the Pricing Vendor Marks accurately reflected the price the Strategy Accounts could

[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.

reasonably expect to receive for the odd lot Relevant CMO positions in a current market sale. As a result, thousands of Relevant CMO positions were marked at inflated prices. MIMBT's overvaluation of odd lot Relevant CMO positions resulted in MIMBT reporting overstated valuations and performance to the Unregistered Investment Vehicles and at certain times during the Relevant Period, overstating the RICs' net asset value ("NAV").

5. MIMBT's marketing materials stated that "liquidity" was a key advantage of the Strategy; however, most of the odd lot Relevant CMO positions held in the Strategy Accounts were largely illiquid and could not be sold in the open market at the round lot Pricing Vendor Marks. In order to satisfy redemption requests from certain investors in one Unregistered Pooled Investment Vehicle during mid-2018, MIMBT executed numerous internal cross trades of Relevant CMO positions with the RICs over the course of two trading days to avoid or minimize losses to that selling Unregistered Pooled Investment Vehicle (the "2018 Internal Cross Trades"). MIMBT also arranged for dealer-interposed cross trades to satisfy redemption requests from investors in certain Unregistered Pooled Investment Vehicles in which MIMBT temporarily sold odd lot Relevant CMO positions to third-party broker-dealers and then repurchased those same positions for allocation to one or more Strategy Accounts.

6. By arranging these internal and dealer-interposed trades, MIMBT was able to execute the trades at prices that often deviated from current market prices. As a result, certain Strategy Accounts (primarily the RICs) absorbed the trading losses that otherwise would have been borne by the redeeming Unregistered Pooled Investment Vehicles. MIMBT's execution of the cross trades created undisclosed conflicts of interest and benefitted certain MIMBT advisory clients over others, in breach of MIMBT's fiduciary duty of loyalty and duty of care under the Advisers Act. Cross transactions involving the RICs also violated certain of the affiliated transactions prohibitions of the Investment Company Act.

7. As a result of the conduct described above, certain of MIMBT's marketing materials, due diligence questionnaires, performance reports, monthly commentary to investors, reports to the relevant RIC Boards of Trustees ("RIC Boards"), and Forms N-CSR filed with the Commission during the Relevant Period contained materially false and misleading statements and omissions about performance, liquidity, asset valuation, and cross trading involving the Strategy Accounts and related investments.

8. During the Relevant Period, MIMBT's compliance department had responsibility for the implementation of its own compliance policies and procedures applicable to the Strategy Accounts ("MIMBT Compliance Policies") as well as the implementation of the RIC compliance policies and procedures, as adopted and approved by the RIC Boards ("RIC Compliance Policies") (collectively, the "Compliance Policies"). MIMBT failed to implement the MIMBT Compliance Policies applicable to the Strategy Accounts relating to conflicts of interest, pricing, and cross trades and failed to implement the RIC Compliance Policies relating to the pricing of portfolio securities and cross trades.

Respondent

9. **Macquarie Investment Management Business Trust** ("MIMBT") is a Delaware statutory trust with its principal place of business in Philadelphia, Pennsylvania. It is an indirect wholly owned subsidiary of Macquarie Group Limited, an Australian global financial services company, whose common stock trades on the Australian Securities Exchange (Ticker: MQG). During the Relevant Period, the statutory trust consisted of six series, including, among others, the Delaware Management Company series that provided investment advisory services to over 80 U.S.-registered investment companies, and the Macquarie Investment Management Adviser series, that provided investment advisory services to, among others, institutional clients, separately managed accounts, and pooled investment vehicles domiciled in the U.S. and abroad. MIMBT is an investment adviser registered with the Commission since May 31, 1988. According to its most recent Form ADV filed with the Commission on June 28, 2024, MIMBT has approximately $191 billion in regulatory assets under management.

Background

10. In 2007, MIMBT's predecessor developed the Strategy and launched the first private fund to invest in Strategy investments and also created the related Absolute Return Mortgage-Backed Securities Composite ("Composite"), which tracked the Strategy's annual performance. In 2008, MIMBT acquired that initial fund and took over management of the Strategy and the Composite. The Strategy's core portfolio included fixed income securities, namely, MBS, treasury futures, and agency CMOs. The Relevant CMO portion of the Strategy was a combination of IO tranches, representing the interest portion of the mortgage-backed security, and LCF tranches, representing the last tranche of the CMO to receive principal payment. No new investor capital was invested in the Strategy after February 2019. MIMBT discontinued the Strategy in April 2021, after the SEC commenced its investigation.

11. During the Relevant Period, six Strategy Accounts were fully invested in Strategy investments and fourteen Strategy Accounts had a partial allocation to investments related to the Strategy. During the Relevant Period, each RIC held less than 7% of its total investments in Relevant CMOs. The Strategy was managed by a portfolio management team in MIMBT's fixed income department. This team was responsible for investment selection and trading decisions for each Strategy Account's allocation to Strategy investments.

12. During the Relevant Period, MIMBT substantially increased its marketing of the Strategy worldwide and steadily increased the allocation of Relevant CMOs to Strategy Accounts. According to Strategy monthly reports provided to investors, the assets under management ("AUM") of Strategy Accounts fully invested in the Strategy increased from $13 million at the end of 2015, to over $1 billion at its peak in May 2018. MIMBT marketing materials and investor correspondence reported that the Strategy's total allocation to CMOs (including, but not limited to, the Relevant CMOs) reached approximately 75% in 2018. Strategy Accounts with partial exposure to Strategy investments held approximately $1.1 billion in Relevant CMO positions as of May 2018.

13. During the Relevant Period, MIMBT earned over $7 million in advisory fees for managing the Strategy Accounts and related investments.

Overvaluation of the Relevant CMOs

14. The Compliance Policies relating to portfolio pricing directed that all debt securities, including CMOs, be priced on the basis of valuations provided by the Pricing Vendor. MIMBT's Compliance Policies utilized the same valuation method as contained in the RIC Compliance Policies. The Pricing Vendor's disclosures stated that its published evaluated prices represented a good faith estimate of the price the holder of the security could reasonably expect to receive in an orderly transaction for a round lot position under current market conditions and did not provide separate valuations for odd lot positions. According to the Compliance Policies, if valuations are not available from the Pricing Vendor, "then quotations will be obtained from brokers/dealers and valued at the mean between the bid and the offer if available, then the bid if available or the last available price when appropriate; otherwise fair value will be determined." When market quotations are not available, the determinations of "fair value" will be made by the "Pricing Committee" and included criteria and pricing methodologies for the Pricing Committee to consider when determining fair value. The Pricing Committee was responsible for the oversight of pricing for all Strategy Accounts.

15. During the Relevant Period, odd lot positions of the Relevant CMOs generally traded at a significant discount to round lots of the same bonds. MIMBT purchased the Relevant CMOs in both round lot and odd lot positions and then allocated a pro rata share to each participating Strategy Account. When MIMBT purchased an odd lot position at a current market price and allocated it to the Strategy Accounts, the position was priced at the Pricing Vendor Mark intended for round lots, resulting in an immediate performance gain. Even when MIMBT purchased Relevant CMOs for the Strategy Accounts in round lot positions, its practice of allocating round lots across multiple accounts typically resulted in Strategy Accounts holding Relevant CMOs in odd lot positions, which were then priced at the Pricing Vendor Mark intended for round lots.

16. Trading records reflect over 3900 purchases of IO positions in Strategy Accounts during the Relevant Period. Approximately 90% of these IOs were odd lot positions, and approximately 64% of those IO positions had a value under $100,000. Trading records reflect approximately 1000 purchases of LCF positions in Strategy Accounts during the Relevant Period, and approximately 90% of these were odd lot positions. All of these odd lot positions were improperly priced at Pricing Vendor Marks intended for round lots, which positively impacted the daily performance that MIMBT reported to the Unregistered Investment Vehicles and at certain times during the Relevant Period overstated the NAV of the RICs by at least $0.01 per share. MIMBT's internal performance attribution reports, created for select Strategy Accounts, show that the positive performance in 2017 and 2018 was primarily attributed to the Relevant CMOs (and IOs, in particular).

17. In August 2018, MIMBT convened the Pricing Committee to address the pricing variance between Pricing Vendor Marks and market prices for odd lot Relevant CMOs. The Pricing Committee directed the Strategy's portfolio management team to conduct an analysis of the trading discount for odd lot Relevant CMO positions and to determine odd lot exposure across the Strategy Accounts.

18. The Strategy's portfolio management team prepared an internal pricing analysis for the Pricing Committee, which estimated that odd lot positions traded at discounts to Pricing Vendor Marks ranging from 3% to 28%, with the discount proportionally higher as the lot size decreased. Among other things, the Pricing Committee considered and discussed the implications of a prior enforcement action that involved odd lot overvaluation and discussed options for valuing the Strategy's odd lot CMO holdings, including to fair value the positions. Ultimately, in September 2018, the Pricing Committee concluded that it was appropriate to continue utilizing the Pricing Vendor Marks with no adjustment based on trade lot size, reasoning that it was "industry practice" to do so.

19. MIMBT did not implement the applicable pricing procedures contained in the Compliance Policies. MIMBT improperly priced odd lot Relevant CMOs at Pricing Vendor Marks that were intended only for round lot positions. Even though odd lot valuations were not available from the Pricing Vendor, MIMBT did not obtain market quotations from broker-dealers or take steps to fair value the odd lot Relevant CMO positions, as required by the Compliance Policies. As a result, thousands of Relevant CMO positions held in Strategy Accounts were marked at inflated prices. MIMBT's overvaluation of odd lot Relevant CMO positions resulted in MIMBT reporting overstated performance to the Unregistered Investment Vehicles, and the RICs overstating NAV.

Unlawful Cross Trading to Satisfy Redemptions

20. Strategy marketing materials provided to certain Strategy Accounts stated that the Strategy focused on preservation of capital and risk management and that liquidity was a "key advantage and important distinguishing feature." In response to certain due diligence questionnaires from prospective clients regarding the liquidity of the Strategy, MIMBT stated that "100% of securities can be liquidated within 1-3 days, within 5% of current prices." However, during the Relevant Period, MIMBT typically could not sell the largely illiquid odd lot Relevant CMO positions at the round lot Pricing Vendor Marks.

21. When certain investors in the Unregistered Pooled Investment Vehicles made redemption requests during 2017 and 2018, MIMBT partially funded the requests by cross trading odd lot Relevant CMO positions held in the redeeming account with other Strategy Accounts (primarily the RICs). During the Relevant Period, MIMBT engaged in approximately 465 internal cross trades and 175 dealer-interposed cross trades involving the Relevant CMOs. These cross trades were not executed at a current market price. MIMBT's execution of the trades created undisclosed conflicts of interest and benefitted certain MIMBT advisory clients over others, in

breach of its fiduciary duty under the Advisers Act. Cross trades involving the RICs also violated certain of the affiliated transactions prohibitions of the Investment Company Act.

22. Cross trades can benefit clients because the practice enables a portfolio manager to move securities among client accounts without having to expose the security to the market thereby saving transaction and market costs that would otherwise be paid to executing broker-dealers. Conversely, these transactions can also pose substantial risks to clients due to the inherent conflict of interest for the adviser, which has a duty of loyalty and duty of care to seek best execution for each client.

23. With respect to cross trades involving the RICs, Sections 17(a)(1) and 17(a)(2) of the Investment Company Act generally prohibit any affiliated person of a RIC or any affiliated person of the affiliated person, acting as principal, from knowingly selling a security to or purchasing a security from the RIC unless the person first obtains an exemptive order from the Commission under Section 17(b). Rule 17a-7 under the Investment Company Act exempts from these prohibitions certain cross trades where the affiliation between a RIC and its trading counterparty arises solely because the two have a common investment adviser, or investment advisers that are affiliated persons of each other, common directors, or officers, provided that the cross trades are effected in accordance with Rule 17a-7. Rule 17a-7 requires, among other things, that cross trades be executed at the "independent current market price," which is defined in relevant part as "the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry." If a brokerage commission, fee, or other remuneration is paid in connection with the cross trade, the cross trade is not eligible for an exemption under Rule 17a-7 and is therefore, impermissible.

24. Section 48(a) of the Investment Company Act prohibits "any person, directly or indirectly, to cause to be done any act or thing through or by means of any other person which it would be unlawful for such person to do" under the Investment Company Act or the rules thereunder. The Commission has stated that interpositioning a dealer in cross trades does not remove the cross trades from the prohibitions of Section 17(a). *See Exemption of Certain Purchase or Sale Transactions Between a Registered Investment Company and Certain Affiliated Persons Thereof*, Investment Company Act Release No. 11136, 1980 WL 29973, at *2 n.10 (Apr. 21, 1980).

25. During the Relevant Period, the Compliance Policies were designed to ensure that cross trades involving the RICs were executed in compliance with Rule 17a-7 under the Investment Company Act. Included among the Compliance Policies was an internal desktop procedure outlining the steps required for the Compliance Department to review and approve all cross trades (the "Cross Trade Approval Policy"). The Cross Trade Approval Policy permitted cross trades only if certain conditions were met. Among other things, the Cross Trade Approval Policy required MIMBT compliance personnel to confirm that: (i) the securities involved were not illiquid; (ii) the quantity of shares being traded was equal between client accounts; (iii) the cross trades were between RICs, and no separately managed accounts were involved; (iv) the cross trades would

benefit every client account involved; (v) the Portfolio Manager for all accounts involved approved the cross trade; and (vi) the transaction was effected at the independent current market price of the security. The Compliance Policies did not specifically address dealer-interposed cross trades.

Prohibited Dealer-Interposed Cross Trades

26. Trading records reflect that during the Relevant Period, MIMBT engaged in more than 175 dealer-interposed cross trades of odd lot Relevant CMOs in order to partially satisfy pending redemption requests from certain investors in Unregistered Pooled Investment Vehicles. MIMBT temporarily sold odd lot positions to a third-party broker-dealer and then repurchased the same position from that broker-dealer for one or more Strategy Accounts at a markup. The trades were not executed at a current market price. By executing these trades, MIMBT was able to provide the redeeming Unregistered Pooled Investment Vehicles liquidity in a largely illiquid market and minimized trading losses for the redeeming clients.

27. For example, in March 2017, an investor in one Unregistered Pooled Investment Vehicle with approximately $20 million invested in Strategy-related investments requested a $8.4 million redemption. To partially satisfy the redemption request, MIMBT temporarily sold approximately 60 odd lot IO positions to a third-party broker-dealer at the Pricing Vendor Mark and repurchased those same securities, from the same broker-dealer at the Pricing Vendor Mark (plus a small markup) for two of the RICs. The cross trading benefitted the redeeming Unregistered Pooled Investment Vehicle, which sold the odd lot positions at prices higher than the independent current market price, but disadvantaged the two RICs which purchased the odd lot positions at prices higher than the independent current market price. MIMBT then improperly priced the odd lot positions purchased by these RICs at the round lot Pricing Vendor Marks.

28. From June through August 2018, investors in two other Unregistered Pooled Investment Vehicles made a series of redemption requests, leading to the eventual full liquidation of both Unregistered Pooled Investment Vehicles. These Unregistered Pooled Investment Vehicles collectively held approximately 425 odd lot Relevant CMO positions that could not be sold at Pricing Vendor Marks. MIMBT temporarily sold approximately 100 of the odd lot Relevant CMO positions to certain third-party broker-dealers and repurchased those same securities from the same broker-dealers for certain other Strategy Accounts. The trades were not executed at a current market price, and the repurchases all included a markup. The cross trading benefitted the redeeming Unregistered Pooled Investment Vehicles, which sold the odd lot positions at prices higher than a current market price, but disadvantaged the purchasing Strategy Accounts, which purchased the odd lot positions at prices higher than a current market price. MIMBT then improperly valued the odd lot positions purchased for the Strategy Accounts at the round lot Pricing Vendor Marks (i.e., above their fair value). MIMBT's execution of the trades created undisclosed conflicts of interest and benefitted certain MIMBT advisory clients over others, in breach of its fiduciary duty under the Advisers Act. Cross trades involving the RICs also violated certain of the affiliated transactions prohibitions of the Investment Company Act.

29. MIMBT's compliance systems and controls did not detect the unlawful dealer-interposed cross trading, even though the trades involved the same thinly-traded bond being sold and repurchased through the same broker-dealer, in the same odd lot size, and involved MIMBT accounts on both sides of the transaction.

Prohibited Internal Cross Trades

30. After MIMBT effected the series of dealer-interposed cross trades as identified above, the two redeeming Unregistered Pooled Investment Vehicles still held odd lot Relevant CMOs that needed to be sold to satisfy remaining investor redemption requests. The Strategy portfolio management team informed the MIMBT distribution and compliance departments that the pricing discounts for the remaining odd lot IO securities could be as much as 40% to 50% below the Pricing Vendor Marks. MIMBT personnel discussed in an email the possibility of internally cross trading the securities to other Strategy Accounts as an option to "benefit the redeeming investor."

31. On July 30, 2018, MIMBT directed the sale of 134 IO positions from one of the redeeming Unregistered Pooled Investment Vehicles. The sales were effected through approximately 450 internal cross trades between that Unregistered Pooled Investment Vehicle and the RICs. Each cross trade involved an odd lot IO position, and nearly 80% of the cross trades involved IO positions valued at less than $100,000. All cross trades were executed above independent current market prices. These internal cross trades resulted in the RICs absorbing losses that otherwise would have been borne by the redeeming Unregistered Pooled Investment Vehicles in a market sale. MIMBT's compliance department approved these internal cross transactions. However, the compliance department did not verify that "the Portfolio Manager (or designee) for all accounts involved had approved the trade," as required by the Cross Trade Approval Policy.

32. On August 27, 2018, MIMBT directed the sale of two additional IO positions from the same redeeming Unregistered Pooled Investment Vehicle. The sales were effected through 15 internal cross trades with seven RICs. These internal cross trades similarly resulted in the RICs absorbing losses that otherwise would have been borne by the redeeming Unregistered Pooled Investment Vehicle in a market sale. MIMBT's compliance department approved the 15 internal cross trades. However, the compliance department did not verify that the relevant portfolio managers for all RICs involved had approved the trades. In total, more than 95% of the Relevant CMO sales from this redeeming Unregistered Pooled Investment Vehicle were effected through unlawful cross transactions.

33. Also in August 2018, MIMBT directed a series of internal cross trades of odd lot IO positions between the second redeeming Unregistered Pooled Investment Vehicle and two RICs. However, the day before the scheduled cross trades, the portfolio manager for the purchasing RICs learned about the proposed trades. He notified the Strategy portfolio management team and the MIMBT compliance department that he had not authorized any cross trades into the RICs he managed. As a result, the cross trades were canceled.

34. MIMBT's execution of the dealer-interposed and internal cross trades at prices other than a current market price created undisclosed conflicts of interest and benefitted certain MIMBT advisory clients over others, in breach of MIMBT's fiduciary duty of loyalty and duty of care under the Advisers Act.

35. Additionally, none of the dealer-interposed or internal cross trades described above involving the RICs complied with Rule 17a-7 under the Investment Company Act or the applicable Compliance Policies. MIMBT did not seek an exemptive order for the cross transactions, and the transactions were not exempt from the prohibition by virtue of Rule 17a-7 because the trades were not executed at current independent market prices, and the dealer-interposed cross trades were made through one or more broker-dealers who received remuneration in connection with the transaction. Moreover, MIMBT did not ensure that the cross trades complied with internal Compliance Policies. For example, compliance personnel failed to confirm that no separately managed accounts were involved in the trades, that the odd lot positions in the cross trades were not illiquid securities, and that the cross trades benefitted every account involved. In fact, the cross trades resulted in the RICs purchasing largely illiquid securities from certain Unregistered Pooled Investment Vehicles and absorbing losses that otherwise would have been borne by those Unregistered Pooled Investment Vehicles. Moreover, compliance personnel did not verify that the portfolio manager for all accounts involved approved each cross trade.

Undisclosed Odd Lot Repositioning Plan

36. In September 2018, following the cross trades described above, concerns relating to the valuation of the Relevant CMOs and related liquidity risks to Strategy Accounts, potential conflicts of interest, and the adequacy of Strategy disclosures were elevated to MIMBT's risk team, which subsequently prepared a memorandum to update the MIMBT Executive Committee. Although MIMBT implemented certain changes to address the concerns, including discontinuing purchasing odd lot positions, MIMBT did not implement policies and procedures to fair value existing odd lot positions or disclose to investors the liquidity risks the existing odd lot positions had on Strategy Accounts.

37. After the scheduled cross trades involving the second redeeming Unregistered Pooled Investment Vehicle were canceled, more than half of the Relevant CMO positions remained in that account. Throughout September and October 2018, MIMBT sold more than 80 of the remaining odd lot positions by aggregating them with identical positions held in certain other Strategy Accounts to create a round lot or larger odd lot position. These positions were ultimately sold in the open market at a loss from Pricing Vendor Marks, but the losses were reduced by aggregating the positions with those held in other Strategy Accounts. Several Strategy Account investors asked MIMBT about the reasons these positions were sold at a loss relative to the Pricing Vendor Marks. MIMBT did not disclose the known overvaluation of odd lot positions but instead blamed the losses solely on market conditions.

38. In March 2019, MIMBT replaced a co-portfolio manager of the Strategy. After this change, one of the Unregistered Investment Vehicles lost two buy ratings and began experiencing a

significant increase in redemption requests. At that time, approximately one-third of that fund's portfolio was comprised of odd lot Relevant CMO positions. MIMBT management was concerned about the fund's liquidity if redemptions continued, estimating that the odd lot positions may have to be sold at a 12% discount from Pricing Vendor Marks, materially impacting the Unregistered Investment Vehicle's performance. MIMBT ultimately approved a plan to rebalance the Strategy Accounts by aggregating identical odd lot Relevant CMO positions held by the Strategy Accounts and then selling the positions in the open market in two stages, first for one week commencing April 15, 2019, followed by another round of sales for the week commencing May 13, 2019.

39. Strategy Accounts were not given any prior notice of the planned sales, and the trading had a negative impact on portfolio performance of the Strategy Accounts. One Strategy Account questioned MIMBT about the losses resulting from the sales. MIMBT management instructed personnel not to communicate proactively with the Strategy Accounts about the sales but instead to use the standard monthly commentary ("Monthly Reports") as the primary method of informing clients. However, the Monthly Reports did not include complete and accurate information about the extent of Relevant CMO odd lot positions held in the portfolios, MIMBT's inability to sell these positions at the Pricing Vendor Marks, or the repositioning of the odd lot holdings.

40. MIMBT discontinued the Strategy in April 2021.

False and Misleading Disclosures

Marketing Materials and Performance Reports

41. Throughout the Relevant Period, MIMBT made materially false and misleading statements regarding performance, liquidity, and valuation of investments related to Strategy Accounts in certain marketing materials and performance reports.

42. Strategy marketing materials provided to actual and prospective clients included Strategy quarterly updates and responses to due diligence questionnaires and requests for information. Throughout the Relevant Period, marketing materials stated that liquidity was a "key advantage and important distinguishing feature" of the Strategy and described Strategy investments as "highly liquid." For example, in response to certain due diligence questionnaires from prospective clients and investors regarding the liquidity of the Strategy, MIMBT stated that "100% of securities can be liquidated within 1-3 days, within 5% of current prices." However, for the reasons described above, Relevant CMOs were largely illiquid and could not be sold at the Pricing Vendor Marks. No marketing materials disclosed that odd lots of the Relevant CMOs were being valued at higher, round lot prices or that the securities were generally illiquid.

43. Throughout the Relevant Period, MIMBT disseminated to Strategy Accounts Monthly Reports for the Strategy and related investments. The Monthly Reports included overstated performance returns for the Strategy that were calculated using improper valuations for the Relevant CMOs. None of the Monthly Reports disclosed the overvaluation of the Relevant

CMOs, the liquidity risks inherent in those positions, the unlawful cross trading, or the planned repositioning in 2018 to sell existing odd lot holdings.

Annual Reports Filed with the Commission

44. Throughout the Relevant Period, MIMBT made materially false and misleading statements regarding valuation of client assets and the source of fund performance in annual reports filed with the Commission on Forms N-CSR that it prepared for the RICs ("Annual Reports").

45. For example, the Annual Report for one RIC for the period ended March 31, 2017, noted in the "Portfolio Management Review" section that investments in Relevant CMOs outperformed two relevant benchmarks and contributed to the fund's positive performance. The Annual Reports for one RIC for the period ended July 31, 2017, two RICs for the period ended October 31, 2017, and one RIC for the period ended December 31, 2017, similarly noted that Relevant CMOs contributed to positive performance. However, none of the Annual Reports disclosed that Relevant CMOs were overvalued and had not been priced in accordance with RIC Compliance Policies.

46. MIMBT's subsequent reduction of Relevant CMO positions in Strategy Accounts following the 2018 Internal Cross Trades negatively impacted the performance of the RICs. Each of the Annual Reports filed after the 2018 Internal Cross Trades disclosed underperformance during the period, however, these reports materially misstated MIMBT's rationale for selling the Relevant CMOs and the resulting losses. For example, the Annual Report for one RIC for the period ended March 31, 2019, noted that the fund had reduced its Relevant CMO allocation during the "second half of 2018 and . . . the first quarter of 2019", and Relevant CMO returns were "quite negative" and a "large drag on performance." However, the report omitted any disclosure about the performance impact resulting from the overvaluation and illiquidity of those positions. Moreover, that report failed to disclose the RICs' *purchases* of Relevant CMOs at above-market prices through cross trades during the same period. Similarly, Annual Reports for two RICs for the period ended October 31, 2018, disclosed that the funds had begun to unwind investments in Relevant CMOs in late 2018 because they "were no longer attractive in a more volatile environment" but omitted any disclosure about the illiquidity and overvaluation of the positions.

47. None of the relevant Annual Reports disclosed the unlawful cross trading between the RICs and other Strategy Accounts occurring throughout 2018, and the resulting impact of the RICs absorbing losses that would otherwise have been borne by redeeming Strategy Accounts.

Reports to the RIC Boards

48. During the Relevant Period, the RIC Compliance Policies required that all trades effected pursuant to Rule 17a-7 under the Investment Company Act be identified and reported to the relevant RIC Boards on a quarterly basis. In October 2018, MIMBT's compliance department provided its quarterly compliance reports ("Quarterly RIC Reports") to the RIC Boards, which

included information summarizing cross trades that occurred between July and September 2018 ("Quarter"). The Quarterly RIC Reports misrepresented that all cross trades executed during the Quarter were conducted in accordance with Rule 17a-7 under the Investment Company Act and the RIC Compliance Policies. Specifically, the Quarterly RIC Reports misrepresented that each cross trade was effected at the independent current market price of the security, was consistent with the policy of each fund participating in the transactions and effected without any brokerage commission. One Quarterly RIC Report indicated that the cross trades during the Quarter resulted from excess cash and the portfolio manager's belief that the securities purchased were desirable for the fund. Another Quarterly RIC Report stated that the portfolio manager was looking to increase the fund's position in the identified security, and that the "17a-7 purchases were preferable to buying the security in the market."

49. The Quarterly RIC Reports did not disclose that hundreds of the internal cross trades were effected with Unregistered Pooled Investment Vehicles in order to satisfy those vehicles' redemption requests and involved odd lot Relevant CMO positions that could not be sold in the open market at Pricing Vendor Marks. Moreover, the Quarterly RIC Reports failed to report *any* dealer-interposed cross trades.

Compliance Deficiencies

50. Rule 38a-1 under the Investment Company Act requires each registered investment company to adopt and implement written policies and procedures reasonably designed to prevent violations of the federal securities laws. Section 206(4)-7 promulgated under Section 206(4) of the Advisers Act requires that registered investment advisers adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

51. During the Relevant Period, the RIC Compliance Policies included written policies and procedures relating to pricing of portfolio securities and cross trades. However, during the Relevant Period, as described above, MIMBT caused the RICs to fail to implement the funds' pricing and cross trading policies and procedures that were designed to ensure, among things, that (i) the pricing of portfolio securities was accurate; and (ii) cross trades were disclosed to the Board of Trustees and complied with Rule 17a-7 under the Investment Company Act.

52. During the Relevant Period, the MIMBT Compliance Policies included written policies and procedures relating to MIMBT's fiduciary duty to provide disinterested advice and disclose any material conflicts of interest to its clients. During the Relevant Period, as described above, MIMBT failed to implement these policies and procedures by favoring certain advisory clients when directing and executing cross trades and failing to comply with the Cross Trade Approval Policy.

53. In October 2023, MIMBT retained a compliance consultant ("Compliance Consultant") to, among other things, perform a comprehensive review of its policies and procedures. MIMBT has taken steps to enhance its policies, procedures, controls, and training regarding, among other things, valuation, cross trading, conflicts of interest and disclosures. In

addition, MIMBT hired a new chief compliance officer and a senior securities valuation specialist and is adding additional compliance staff. MIMBT has also implemented a new automated trade surveillance system.

Violations

54. As a result of the conduct described above related to the 2018 Internal Cross Trades, MIMBT willfully violated Section 206(1) of the Advisers Act, which makes it unlawful for an investment adviser to employ any device, scheme or artifice to defraud any client or prospective client. Scienter is required to establish a violation of Section 206(1) of the Advisers Act. *SEC v. Steadman*, 967 F.2d 636, 641-42 (D.C. Cir. 1992).

55. As a result of the conduct described above, MIMBT willfully violated Section 206(2) of the Advisers Act, which prohibits investment advisers from "engag[ing] 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) of the Advisers Act, which may rest on a finding of negligence. *Id.* at 643 n.5.

56. As a result of the conduct described above, MIMBT willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the Rules thereunder. A violation of Section 206(4) and the rules thereunder does not require scienter and may rest on a finding of simple negligence. *Id.* at 647.

57. As a result of the conduct described above, MIMBT willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which 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 light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle, or otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle. A violation of Section 206(4) and the rules thereunder does not require scienter and may rest on a finding of simple negligence. *Id.* at 647.

58. As a result of the conduct described above, MIMBT caused the RICs to violate Sections 17(a)(1) and 17(a)(2) of the Investment Company Act, which make it unlawful for any affiliated person or promoter of or principal underwriter for a RIC or any affiliated person of such a person, promoter, or principal underwriter, acting as principal (1) knowingly to sell any security or other property to such RIC or to any company controlled by such RIC, or (2) knowingly to purchase from such RIC, or from any company controlled by such RIC, any security or other property, unless the transaction complies with the exemptive requirements of Rule 17a-7 under the Investment Company Act, or the adviser obtains an exemptive order under 17(b) of the Investment Company Act. MIMBT did not seek an exemptive order for the cross transactions MIMBT effected, and the transactions were not exempt from the prohibition by virtue of Rule 17a-7

because the dealer-interposed trades were made through one or more broker-dealers who received remuneration in connection with the transaction. Moreover, the transactions were not executed at a price equal to the average of the highest current independent bid to purchase that security and the lowest current independent offer to sell that security, determined on the basis of reasonable inquiry.

59. Section 34(b) of the Investment Company Act makes it unlawful for any person to make any untrue statement of material fact in any registration statement, application, report, account, record, or other document filed with the Commission under the Investment Company Act, or the keeping of which is required pursuant to Section 31(a) of the Investment Company Act, or to omit from any such document any fact necessary in order to prevent the statements made therein from being materially misleading. As a result of the conduct described above, MIMBT willfully violated Section 34(b) of the Investment Company Act. Establishing a violation of Section 34(b) of the Investment Company Act does not require proof of scienter. *See In the Matter of Fundamental Portfolio Advisors, Inc.,* Advisers Act Rel. No. 2146, 2003 WL 21658248, at *8 (July 15, 2003) (Commission Opinion).

60. As a result of the conduct described above, MIMBT caused the RICs to violate Rule 22c-1 under the Investment Company Act which prohibits registered investment companies, among others, from the sale, redemption, or repurchase of the investment company's redeemable securities except at a price based on the current net asset value of such security.

61. As a result of the conduct described above, MIMBT caused the RICs to violate Rule 38a-1 under the Investment Company Act, which requires a registered investment company to adopt and implement written policies and procedures reasonably designed to prevent violations of the federal securities laws.

Disgorgement and Prejudgment Interest

62. The disgorgement and prejudgment interest ordered in Section IV.C are consistent with equitable principles, do not exceed Respondent's net profits from its violations, and will be distributed to harmed investors, if feasible. The Commission will hold funds paid pursuant to Section IV.C in an account at the United States Treasury pending a decision whether the Commission in its discretion will seek to distribute funds. If a distribution is determined feasible and the Commission makes a distribution, upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.

Undertakings

63. Effective upon entry of this Order, MIMBT undertakes to continue to retain the services of the Compliance Consultant, exclusively bearing all costs, including compensation and expenses, associated with the retention of the Compliance Consultant.

64. MIMBT shall cooperate fully with the Compliance Consultant and shall provide the Compliance Consultant with access to its files, books, records, and personnel as reasonably requested by the Compliance Consultant. For the period of the engagement, MIMBT: (1) shall not have the authority to terminate the Compliance Consultant or substitute another compliance consultant for the Compliance Consultant without the prior written approval of the Commission staff; and (2) shall compensate the Compliance Consultant and persons engaged to assist the Compliance Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

65. MIMBT shall require the Compliance Consultant to conduct a comprehensive review of the effectiveness and implementation of MIMBT's compliance policies and procedures, relating to: (1) valuation of Relevant CMOs and associated liquidity risks; (2) cross trading; and (3) advisory conflicts of interest and disclosures with respect to (1) and (2) above (collectively, the "Policies and Procedures"). MIMBT shall require the Compliance Consultant to provide MIMBT with any recommendations for changes or improvements to the effectiveness and implementation of the Policies and Procedures as the Compliance Consultant deems appropriate.

66. The Compliance Consultant shall review MIMBT's Policies and Procedures for a period of two years and generate, during that period, an initial report ("Initial Report") in February 2025 assessing the extent to which the Policies and Procedures comply with the Investment Company Act, the Advisers Act, and regulations promulgated thereunder, and making specific recommendations for improvements to the Policies and Procedures. The Initial Report shall include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, and the Compliance Consultant's recommendations for changes in or improvements to MIMBT's Policies and Procedures.

67. The Compliance Consultant shall also generate a final report ("Final Report") (together with the Initial Report, the "Reports") twenty-four months after its initial engagement. The Compliance Consultant will conduct a review of the adoption and implementation of its recommendations and confirm that they have been fully implemented. The Final Report will include a description of how MIMBT has adopted and implemented the recommendations and provide a final assessment as to whether the Policies and Procedures are reasonably designed to prevent violations of the federal securities laws. MIMBT shall provide a copy of each of the Reports to the Commission.

68. MIMBT shall adopt all recommendations contained in the Initial Report within forty-five (45) days of the date of the report; provided, however, that within thirty (30) days after the date of the report, MIMBT shall in writing advise the Compliance Consultant and the Commission staff of any recommendations that MIMBT considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that MIMBT considers to be unduly burdensome, impractical, or inappropriate, MIMBT need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose.

69. As to any recommendation on which MIMBT and the Compliance Consultant do not agree, MIMBT shall attempt in good faith to reach an agreement with the Compliance Consultant on an alternative proposal within sixty (60) days after the submission of the Initial Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by MIMBT and the Compliance Consultant, MIMBT shall require that the Compliance Consultant inform MIMBT and the Commission staff in writing of the Compliance Consultant's final determination concerning any recommendation to which MIMBT has objected. MIMBT shall abide by the determinations of the Compliance Consultant. Within thirty (30) days after the final agreement between MIMBT and the Compliance Consultant or final determination of the Compliance Consultant, whichever occurs first, MIMBT shall adopt and implement all of the recommendations that the Compliance Consultant deems appropriate.

70. For good cause shown and upon timely application of MIMBT, the Commission staff may extend any of the procedural dates relating to the 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 to be the last day.

71. For the period of engagement and for a period of two years from completion of the engagement, MIMBT undertakes not to (i) retain the Compliance Consultant for any other professional services outside of the services described in this Order; (ii) enter into any other professional relationship with the Compliance Consultant, including any employment, consultant, attorney-client, auditing or other professional relationship; or (iii) enter, without prior written consent of the Commission staff, into any such professional relationship with any of the Compliance Consultant's present or former affiliates, employers, directors, officers, employees, or agents acting in their capacity as such.

72. The Reports and related written communications of the Compliance Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of a Report could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, Reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) as otherwise required by law.

73. MIMBT shall preserve, for a period of not fewer than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of compliance with these undertakings.

74. MIMBT shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, 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 Glenn S. Gordon, Associate Regional Director, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1950, Miami, FL 33131, with a copy to the Office of the Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of completion of the undertakings.

75. MIMBT shall cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, MIMBT shall: (i) produce, without service of a notice or subpoena, any and all non-privileged documents and other information requested by the Commission staff subject to any restrictions under the law of any foreign jurisdiction; (ii) use its best efforts to cause their officers, employees, and directors to be interviewed by the Commission staff at such time as the staff reasonably may direct; and (iii) use its best efforts to cause their officers, employees, and directors to appear and testify without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission staff. In determining whether to accept the Offer, the Commission has considered this undertaking.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent MIMBT'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 MIMBT cease and desist from committing or causing any violations and any future violations of Sections 206(1), 206(2), and206(4) of the Advisers Act and Rules 206(4)-7 and 206(4)-8 thereunder, and Sections 17(a)(1) and (a)(2) and 34(b) of the Investment Company Act and Rules 22c-1 and 38a-1 thereunder.

B. Respondent MIMBT is censured.

C. Respondent MIMBT shall within 10 days of the entry of this Order, pay disgorgement of $7,633,671 and prejudgment interest of $2,197,535 to the Securities and Exchange Commission. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, transfer them to the general fund of the United States Treasury, subject to Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

D. Respondent MIMBT shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $70,000,000 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section

308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. 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 MIMBT 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 Glenn S. Gordon, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 801 Brickell Avenue Suite 1950, Miami, FL 33131.

E. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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 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.

F. Respondent MIMBT shall comply with the undertakings enumerated in paragraphs 63 to 74.

By the Commission.

Vanessa A. Countryman
Secretary