

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 83003 / April 6, 2018

INVESTMENT ADVISERS ACT OF 1940
Release No. 4877 / April 6, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18425

In the Matter of

**GENEOS WEALTH
MANAGEMENT, INC.,**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND 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 Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), against Geneos Wealth Management, Inc. (“Geneos” 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 Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise from a series of failures by Geneos, a registered investment adviser and broker-dealer, in connection with its mutual fund share class selection practices and its receipt of revenue sharing payments. First, from February 2012 through April 2017 (the "Relevant 12b-1 Period"), Geneos invested certain advisory clients in mutual fund share classes that charged 12b-1 fees when these clients were eligible to invest in cheaper share classes of the same funds that did not charge such fees. Geneos financially benefitted from investing advisory clients in mutual fund share classes with higher fees, which created a conflict of interest that Geneos failed to adequately disclose in its Forms ADV, Part 2A ("firm brochures") or otherwise. In its capacity as a broker-dealer, Geneos received at least \$1,047,617.50 in 12b-1 fees based on its advisory clients' investments in the higher-fee share classes. Geneos' practice of investing advisory clients in mutual fund share classes that charged 12b-1 fees rather than cheaper share classes of the same funds was also inconsistent with its duty to seek best execution.

2. Second, from February 2012 through January 2018 (the "Relevant Revenue Sharing Period"), Geneos failed to disclose to its clients compensation that it received through agreements with two third-party broker-dealers ("Clearing Brokers") and conflicts arising from that compensation. Pursuant to the agreements, the Clearing Brokers agreed to share with Geneos certain revenues that the Clearing Brokers received from the mutual funds in the Clearing Brokers' no-transaction-fee mutual fund programs ("NTF Programs"). These payments, totaling \$386,185.77, created a conflict of interest in that they provided a financial incentive for Geneos to favor the mutual funds in the NTF Programs over other investments when giving investment advice to its advisory clients.

3. Finally, Geneos failed to adopt written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its mutual fund share class selection practices and its revenue sharing arrangements with the Clearing Brokers.

4. As a result of the conduct described above, Geneos willfully² violated Sections 206(2), 206(4), and 207 of the Advisers Act and Rule 206(4)-7 thereunder.

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.

² A willful violation of the securities laws means merely "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." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

Respondent

5. **Geneos Wealth Management, Inc. (“Geneos”)**, a Colorado corporation based in Centennial, Colorado, has been registered with the Commission as an investment adviser since 2003 and as a broker-dealer since 2002 (CRD 120894). Geneos is owned by GWM Holdings, Inc. Geneos provides advisory services to approximately 11,500 advisory clients through approximately 250 investment adviser representatives (“IARs”), most of whom are also registered representatives of Geneos’ broker-dealer. In its Form ADV filed September 18, 2017, Geneos reported regulatory assets under management of approximately \$2.6 billion, a majority of which is associated with discretionary client accounts.

Background

6. From at least 2012, Geneos offered asset management services to its advisory clients (“Advisory Clients”) through two programs, (i) a wrap fee program, for which clients pay Geneos an all-inclusive fee for asset management and trade execution, and (ii) a fee-based non-wrap fee program, for which clients pay for execution costs in addition to investment advisory fees (collectively, “Advisory Programs”). These Advisory Programs enabled Geneos’ IARs to invest client assets in various mutual funds across numerous fund complexes. For each Advisory Program, Geneos also acted as the introducing broker-dealer on all securities transactions.

7. From at least 2012, Geneos engaged the Clearing Brokers to provide clearing and custody services for the majority of its advisory clients. The Clearing Brokers provide trade execution, custody of assets, and reporting services.

Mutual Fund Share Class Selection

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 their fee structure.

9. For example, “Class A” shares³ generally are sold with sales charges or “loads” based on the dollar amount of the investment. The sales charges are generally waived for Class A shares purchased in wrap fee or fee-based advisory accounts. Class A shares, including “load-waived” Class A shares purchased in advisory accounts, charge 12b-1 fees to cover fund distribution and shareholder services. These recurring fees are deducted from the mutual fund assets on an ongoing basis and paid to the fund’s distributor or principal underwriter, which, in turn, generally remits the fees to the broker-dealer that distributed or sold the shares. The 12b-1 fee for this type of share class is typically 25 basis points per year.

10. Many mutual funds also offer other share classes that do not charge 12b-1 fees

³ Share classes sold with sales charges or “loads” go by a variety of names in the mutual fund industry. As used in this Order, the term “Class A shares” refers generically to share classes that charge 12b-1 fees.

(e.g., “Institutional class” or “Class I” shares).⁴ Some of these share classes are available only to investors who meet certain criteria (e.g., minimum investment amount or eligible investment program), which vary from fund to fund. For many of the Class I shares that have higher initial investment minimums as compared to Class A shares, the funds waive or substantially reduce these thresholds for client purchases, particularly in advisory accounts such as the Advisory Programs offered by Geneos. A client who holds Class I shares of a mutual fund will pay lower fees over time – and earn higher returns – than a client who holds Class A shares of the same fund. Therefore, if a mutual fund offers a Class I share, and a client is eligible to own it, it is almost invariably in the client’s best interest to purchase or hold the Class I share.

11. During the Relevant 12b-1 Period, Geneos’ IARs purchased, recommended, or held, on behalf of certain Advisory Clients, mutual fund share classes that charged 12b-1 fees (Class A shares) when those clients were otherwise eligible to invest in cheaper share classes of those same funds (primarily Class I shares). As a result, Geneos received 12b-1 fees that it would not have collected had Geneos’ Advisory Clients been invested in cheaper share classes. With respect to the 12b-1 fees generated from the non-wrap accounts, Geneos passed on a portion of the 12b-1 fees to its registered representatives, who acted in their dual capacities as Geneos’ IARs for the share class investments at issue.

Revenue Sharing with the Clearing Brokers

12. During the Relevant Revenue Sharing Period, the Clearing Brokers offered their NTF Programs to investment advisers. As part of the programs, the Clearing Brokers waived, for clients of participating advisers, the transaction fees they would otherwise charge for purchases of funds.

13. Since at least 2012, Geneos participated in the Clearing Brokers’ NTF Programs. The terms of Geneos’ participation were set forth in agreements with the Clearing Brokers. Under the agreements, the Clearing Brokers agreed to share with Geneos a certain amount of revenues the Clearing Brokers received from the mutual funds in the NTF Programs.

14. From 2012 through January 2018, Geneos’ IARs purchased, recommended, or held, on behalf of certain Advisory Clients, mutual funds that were part of the NTF Programs. As of January 2018, Geneos stopped participating in the NTF Programs and stopped receiving any revenue sharing payments.

Inadequate Disclosures Concerning Mutual Fund Share Class Selection Practices and Revenue Sharing with Clearing Brokers

15. As an investment adviser, Geneos was obligated to fully disclose all material facts to its Advisory Clients, including any conflicts of interest between itself and its Advisory Clients that could affect the advisory relationship. To meet this disclosure obligation, Geneos was

⁴ Share classes that do not charge 12b-1 fees also go by a variety of names in the mutual fund industry. As used in this Order, the term “Class I shares” refers generically to share classes that do not charge 12b-1 fees.

required to provide its Advisory Clients with sufficient information so that they could understand the conflicts of interest that Geneos had, enabling clients to give informed consent to such conflicts or practices or reject them.

16. During the Relevant 12b-1 and Revenue Sharing Periods, Geneos generally disclosed in its firm brochures that it “may” receive 12b-1 fees from the sale of mutual funds and that the availability of such fees created a conflict of interest. However, Geneos failed to disclose that it had a conflict of interest as a result of the additional compensation it received for investing advisory clients in a fund’s 12b-1 fee paying share class when a cheaper share class was available for the same fund. Geneos also failed to adequately disclose that it would and did select share classes paying 12b-1 fees when less expensive share classes were available to certain of Geneos’ Advisory Clients for the same fund. Geneos also did not disclose that it received payments from the Clearing Brokers based on Geneos client assets invested in the NTF Programs or that these payments presented a conflict of interest.

17. In March 2017, Geneos filed an update to its Form ADV for its wrap fee program brochure that included material changes to the disclosures regarding the fees and fee schedule. In particular, Geneos added disclosure that it will select share classes that assess 12b-1 fees most of the time even if a less expensive share class is available to the client. Item 2 of Form ADV, Part 2A requires advisers amending their brochure in their annual update to identify and discuss material changes since the last annual update. Despite Geneos’ material changes to disclosures regarding the fees and fee schedule, Geneos stated in its March 2017 statement of material changes that it had not made any material changes to its business or the contents of its disclosure brochure since March 30, 2016.

Violation of Duty to Seek Best Execution

18. Section 206 of the Advisers Act imposes on investment advisers a fiduciary duty to act for the benefit of their clients. That duty includes, among other things, an obligation to seek best execution for client transactions. *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) (stating that money managers, as fiduciaries to their clients, have an obligation “to execute securities transactions for clients in such a manner that the client’s total cost or proceeds in each transaction is the most favorable under the circumstances”).

19. By causing certain Advisory Clients to invest in fund share classes that charged 12b-1 fees when such clients were otherwise eligible for cheaper share classes, Geneos violated its duty to seek best execution for those transactions.

Compliance Deficiencies

20. During the Relevant 12b-1 and Revenue Sharing Periods, Geneos failed to adopt written policies and procedures reasonably designed to prevent violations of the Advisers Act, and the rules thereunder, in connection with its mutual fund share class selection practices and disclosure of revenue sharing agreements. Geneos did not adopt policies and procedures reasonably designed to ensure that Advisory Clients would be invested in the cheapest available

share class of mutual funds when doing so would be in the clients' best interest. Also, Geneos did not adopt policies and procedures reasonably designed to ensure that proper disclosures were made regarding its revenue sharing agreements.

Violations

21. Section 206(2) of the Advisers Act makes it unlawful for an adviser, directly or indirectly, to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or prospective client. Scierter is not required to establish a violation of Section 206(2), but may rest on a finding of simple 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)). As a result of the conduct described above, Geneos willfully violated Section 206(2).

22. Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require a registered investment adviser to, among other things, “[a]dopt and implement written policies and procedures reasonably designed to prevent violation” of the Advisers Act and its rules. As a result of the conduct described above, Geneos willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

23. Section 207 of the Advisers Act makes it “unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein.” As a result of the conduct described above, Geneos willfully violated Section 207 of the Advisers Act.

Undertakings

Respondent has undertaken to:

1. Notice to Advisory Clients. Within thirty (30) days of entry of the Order, Geneos shall provide via email or mail a copy of the Order to Advisory Clients that were affected by the conduct described in this Order. Also within thirty (30) days of entry of the Order, Geneos will file an updated Form ADV for its wrap fee brochure disclosing in Item 2 a material change to the fee and fee disclosure language and noting that the material change first appeared in the March 2017 version of the Form ADV.

2. Certificate of Compliance. Geneos shall certify, in writing, its 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 Geneos agrees to provide such evidence. The certification and supporting material shall be submitted to Jason J. Burt, Assistant Regional Director, Asset Management Unit, Division of Enforcement, with a copy to the Office of Chief Counsel of the Division of Enforcement, no later than sixty (60) days from the completion of the undertakings.

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 15(b) of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 206(2), 206(4), and 207 of the Advisers Act and Rule 206(4)-7 thereunder.

B. Respondent is censured.

C. Respondent shall pay disgorgement and prejudgment interest, totaling \$1,135,129.07 to compensate Advisory Clients that were affected by the conduct detailed in Paragraphs 1, 3, 6, 8-11, 15-17, and 19-21 of this Order, as follows:

- (i) Respondent shall pay disgorgement of \$1,047,617.50 and prejudgment interest of \$87,511.57, consistent with the provisions of this Subsection C.
- (ii) Within ten (10) days of the entry of this Order, Respondent shall deposit \$1,135,129.07 (the "Distribution Fund") into an escrow account acceptable to the Commission staff and shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600].
- (iii) Respondent shall be responsible for administering the Distribution Fund and may hire a professional acceptable to the Commission, at its own cost, to assist it in the administration of the distribution. The costs and expenses of administering the Distribution Fund, including any such professional services, shall be borne by Respondent and shall not be paid out of the Distribution Fund. Respondent shall distribute the amount of the Distribution Fund to the applicable past and present Advisory Clients affected by the above conduct described herein, pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection C. The Calculation shall be subject to a *de minimus* threshold, as described in Paragraph (iv) below. No portion of the Distribution Fund shall be paid to Respondent or its past or present officers or directors.
- (iv) Respondent shall, within sixty (60) days of the entry of this Order, submit a proposed Calculation to the staff for its review and approval that identifies, at a minimum: (1) the name of each affected past or present Advisory Client account; (2) the exact amount of the payment to be made from the Distribution Fund to each affected past or present Advisory Client account; and (3) the amount of any

de minimus threshold to be applied. Respondent shall also provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondent's proposed Calculation or any of its information or supporting documentation, Respondent shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that Respondent is notified of the objection, which revised Calculation shall be subject to all of the provisions of this Subsection C.

- (v) The distribution of the Distribution Fund shall be made no later than in the next fiscal quarter immediately following the staff's approval of the Calculation but no later than within ninety (90) days of the staff's approval of the Calculation. If Respondent does not distribute any portion of the Distribution Fund for any reason, including factors beyond Respondent's control, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury. Any such payment shall be made in accordance with Paragraph x below.
- (vi) Respondent agrees to be responsible for all tax compliance responsibilities associated with distribution of the Distribution Fund 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 any of Respondent's past or present clients.
- (vii) Within 120 days after Respondent completes the distribution of all amounts payable to affected past or present Advisory Clients and has received notification of any returned payments, Respondent shall submit to the Commission staff a final accounting and certification of the disposition of the Distribution Fund not unacceptable to the staff, which shall be in a format to be provided by the Commission staff. The final accounting and certification shall include: (1) the amount paid to each past or present Advisory Client account; (2) the date of each payment; (3) the check number or other identifier of money transferred to each account; (4) the amount of any returned payment and the date received; (5) a description of any effort to locate a prospective payee 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 Distribution Fund to affected past or present Advisory Clients in accordance with the distribution plan approved by the Commission staff. 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 Geneos as the Respondent in these proceedings and the file number of these proceedings to Jason J. Burt, Assistant Regional Director, Asset Management Unit, Denver Regional Office, Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700,

Denver, Colorado, 80294, or such other address the Commission staff may provide. Any and all supporting documentation for the accounting and 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 accounting and certification.

- (viii) 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.
- (ix) The Commission staff may extend any of the procedural dates set forth in Paragraphs iv through vii of this Subsection C for good cause shown. Deadlines for dates relating to the Distribution 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.
- (x) If Respondent is unable to distribute or return any portion of the Distribution Fund for any reason, Respondent shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury, in accordance with Section 21(F)(g)(3) of the Exchange Act, after the final accounting provided for in Paragraph vii of Subsection C is submitted to the Commission staff.

D. Respondent shall, within ten (10) days of the entry of this Order, pay, in addition to the amounts referenced in Subsection C, disgorgement of \$386,185.77 and prejudgment interest of \$36,807.29, totaling \$422,933.06, to the Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

E. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$250,000 to the Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

1. Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
2. Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

3. Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Geneos as Respondent in this proceeding, and the file number of this proceeding; a copy of the cover letter and check or money order must be sent to Jason J. Burt, Assistant Regional Director, Asset Management Unit, Denver Regional Office, Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, Colorado, 80294.

F. 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.

G. Respondent shall comply with the undertakings enumerated in Section III above.

By the Commission.

Brent J. Fields
Secretary