

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4998 / August 27, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18683

In the Matter of

KEVIN A. GILES

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Kevin A. Giles (“Giles” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing 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. Between July 2011 and June 2015, AEGON USA Investment Management, LLC ("AUIM"), a registered investment adviser, violated certain provisions of the federal securities laws in connection with the offer, sale, and management of three mutual funds and six variable life insurance investment portfolios and variable annuity investment portfolios ("Investment Portfolios") that employed quantitative models for allocation and trading decisions (collectively, the "Products").² Among those violations, AUIM failed to adopt and implement certain compliance policies and procedures, including failing to take reasonable steps to ensure that: (1) its quantitative models worked as intended both before the Products' launched and on a periodic basis after they launched; (2) it adopted and implemented reasonable controls regarding the testing, approval, and documentation of any changes to its quantitative models; and (3) the Products' portfolio managers' discretion to depart from model-directed trades was defined, monitored, and documented. Each of these risks was identified in a November 2011 internal audit report, and Giles agreed to be responsible for addressing them, but failed to do so. As a result, Respondent was a cause of AUIM's compliance failures.

Respondent

2. Kevin A. Giles, age 55, is a resident of Iowa and was AUIM's Director of New Initiatives from October 2006 through July 2015.

Other Relevant Entities

3. AEGON USA Investment Management, LLC ("AUIM") (SEC File No. 801-60667) is registered with the Commission as an investment adviser and is headquartered in Cedar Rapids, Iowa. AUIM is a wholly owned indirect subsidiary of Aegon N.V., a multinational insurance and asset management company headquartered in the Netherlands, and is an affiliate of Transamerica Asset Management, Inc. ("TAM"). AUIM currently has more than \$106 billion in assets under management. AUIM acted as the sub-adviser to the Products, under the supervision of TAM, which was the adviser to the Products.

4. Transamerica Asset Management, Inc. ("TAM") (SEC File No. 801-53319) is registered with the Commission as an investment adviser and is headquartered in Denver,

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 See *In the Matter of AEGON USA Investment Management, LLC, et al.*, Admin. Proc. File No. 3-18681 (Aug. 27, 2018) (the "Aegon Proceeding").

Colorado. TAM is an indirect subsidiary of Aegon N.V. and an affiliate of AUIM. TAM currently has more than \$79 billion in assets under management. TAM acted as the adviser to the Products and hired AUIM to act as sub-adviser to the Products.

Facts

5. As Director of New Initiatives at AUIM, Giles was responsible for identifying and developing opportunities for AUIM to manage third-party assets. Giles worked with TAM to develop investment vehicles that AUIM could manage as a sub-adviser to TAM, including all of the Products. After TAM decided to offer a product suggested by AUIM, Giles would work with the AUIM project management team to sign off on the reasonableness of their development plans and led efforts to design, build, and launch products.

6. By the fall of 2011, because of the significant growth of assets under management in the Investment Portfolios, senior management at AUIM requested the help of an affiliated insurance company internal audit team to conduct an audit of the control environment supporting these six products.

7. On October 6, 2011, the audit team issued an interim status report to Giles and AUIM's Chief Investment Officer ("CIO"). The interim status report identified certain risks concerning AUIM's use of quantitative models, including that:

(i) "AUIM does not have formal controls or policies and procedures to ensure quantitative model development is controlled and models function as expected";

(ii) "AUIM does not periodically perform independent validation of modeling results to ensure the integrity of [the Investment Portfolios'] models remains intact," and therefore "transparency to modeling errors is potentially impaired and at worst may be concealed"; and

(iii) "AUIM has not formally defined the discretion Portfolio Managers have in managing [the Investment Portfolios] regarding trade orders not aligned with modeling results."

8. On or about October 10, 2011, Giles and AUIM's CIO met with the internal auditors to discuss the interim status report. During this and subsequent meetings, Giles and AUIM's CIO were designated as the AUIM management employees responsible for addressing each of the risks identified in the interim status report.

9. On November 4, 2011, the internal audit team issued a final report that included the three risks concerning AUIM's use of quantitative models identified in Paragraph 7, above. This report identified Giles and AUIM's CIO as the members of management responsible for: (i) the implementation of internal controls and other policies and procedures to address each of the identified risks; (ii) the execution of specific steps to address these risks; and (iii) the establishment of specific dates by which such steps would be completed.

10. After Giles and AUIM's CIO were designated with responsibility for the implementation of internal controls and other policies and procedures to address each of the identified risks, AUIM launched three mutual funds that employed models developed from the same quantitative models used to manage the Investment Portfolios studied in the audit. As Director of New Initiatives, Giles led efforts to prepare these mutual funds for launch.

11. AUIM failed to adopt or implement policies and procedures to address the risks identified in the internal audit before launching the mutual funds and for many months after launching all of the Products.

12. Giles failed to take reasonable steps to revise AUIM's policies and procedures. For example, though Giles was one of those responsible for addressing the risks related to model validation and model functioning, he failed to take reasonable steps to accomplish this. AUIM failed to adopt a policy requiring model validation until July 2013 and began validating the quantitative models used to make allocation decisions in the Products only at that point — nearly two years after the launch of the first mutual fund and nearly a year after the launches of the second and third mutual funds.

13. As a result of the negligent conduct described above, Giles was a cause of AUIM's violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which require a registered investment adviser to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and its rules, and to review, no less frequently than annually, the adequacy of the policies and procedures and the effectiveness of their implementation.

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 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Giles shall 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)-7 promulgated thereunder.

B. Respondent Giles shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$25,000.00 to the Fair Fund established in the Aegon Proceeding for distribution to affected investors. The \$25,000 shall be deposited into the same escrow account established in the Aegon Proceeding.

Payments by check or money order must be accompanied by a cover letter identifying Kevin A. Giles 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 Paul A. Montoya, Division of

Enforcement, Securities and Exchange Commission, 175 West Jackson Blvd., Suite 1450, Chicago, IL 60604.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he 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 he 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.

V.

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

By the Commission.

Brent J. Fields
Secretary