UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5086 / December 21, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18949

In the Matter of **WEALTHFRONT ADVISERS, LLC, f/k/a WEALTHFRONT, INC.,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 203(e) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Wealthfront Advisers, LLC, formerly known as Wealthfront, Inc. ("Wealthfront" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that

Summary

Wealthfront is a registered investment adviser to retail clients that uses a software-based "robo adviser" platform. Wealthfront applies a proprietary tax loss harvesting program ("TLH") to clients' taxable accounts. Wealthfront designed TLH to create tax benefits for clients by selling certain assets at a loss that, if realized, can be used to offset income or gains on other transactions, thereby reducing clients' tax liability in a given year. Wealthfront makes available on its website for clients whitepapers containing client disclosures and outlining TLH, among other topics. From October 2012 through mid-May 2016, Wealthfront falsely stated in its TLH whitepaper that it monitored all client accounts to avoid any transactions that might trigger a wash sale. Generally, a wash sale occurs when an investor sells a security at a loss and, within 30 days of this sale, buys the same or a substantially identical security. A wash sale prevents the tax benefit of having sold the asset to realize a loss. In fact, until mid-May 2016, Wealthfront did not monitor client accounts to avoid any transaction that might trigger a wash sale. In Wealthfront's TLH program, wash sales could occur, or were permitted, in certain circumstances relating to the management of a client account such as rebalancing a client portfolio or client directed transactions. In addition, Wealthfront retweeted certain tweets from its clients on its Twitter account that constituted testimonials, which investment advisers are not permitted to publish without required disclosure. Wealthfront also paid bloggers for new client referrals, based on the amount of assets the new client initially deposited, without complying with applicable disclosure and documentation requirements. Wealthfront also failed to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

Respondent

1. **Wealthfront** is a Redwood City, California-based registered investment advisory firm serving retail clients. Wealthfront is an online "robo adviser" that provides automated, software-based portfolio management on a discretionary basis. Wealthfront has been registered with the Commission as an investment adviser since 2008.[2] According to its Form ADV, as of August 16, 2018, Wealthfront had over $11 billion in assets under management.

[1] The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

[2] Respondent originally registered with the Commission as Ka-Ching Group Inc. In October 2010, Ka-Ching changed its name to Wealthfront, Inc.

Wealthfront's Description of its Tax Loss Harvesting Strategy Included a False Statement That it Monitored Client Accounts for Wash Sales

2. Since at least October 2012, Wealthfront has made available on its website whitepapers, which it updates periodically. The whitepapers provide information to clients and prospective clients about Wealthfront's investment methodology and other topics relevant to clients including, for example, TLH. Wealthfront designed TLH to create tax benefits for clients by selling investment assets to capture (i.e., recognize) losses on certain transactions that may be used to reduce clients' tax liability in a given year.

3. Wealthfront advertised the benefits of its TLH strategy. From October 2012 through mid-May 2016, Wealthfront's TLH whitepaper stated that "Wealthfront monitors all the accounts it manages for each client to avoid any transactions that might trigger a wash sale."[3] This statement was false. From October 2012 through mid-May 2016, Wealthfront's TLH software was not programmed to monitor all the accounts it manages for clients to avoid any transactions that might trigger a wash sale. Under Wealthfront's TLH program, wash sales could occur, or were permitted, in certain circumstances, including client directed transactions or rebalancing the client's portfolio. The consequence of a wash sale is that a client cannot use the loss from a particular sale of an asset to offset income or capital gains for tax purposes. Thus, a wash sale can diminish the effectiveness of TLH by deferring to a future year a tax loss that could have been used to offset income or capital gains in the current year.

4. From October 2012 through mid-May 2016, at least 31 percent of accounts enrolled in Wealthfront's TLH strategy experienced some wash sales. From January 1, 2014 to December 31, 2016, the total number of wash sales represented approximately 2.3 percent of tax losses harvested for clients. As a result of these wash sales, clients enrolled in TLH harvested fewer tax losses in the relevant tax year than they would have harvested in the absence of the wash sales.

5. From at least October 2012 through mid-May 2016, Wealthfront failed to adopt written policies and procedures reasonably designed to confirm that the disclosures in its TLH whitepaper concerning wash sales were accurately described and matched its actual practices.

Wealthfront Published Testimonials and Advertisements That Omitted Material Information

6. Wealthfront used its Twitter feed to post advertisements and communicate online with clients and prospective clients under the handle @Wealthfront. In addition to posting original tweets on its feed, Wealthfront selectively republished certain posts by other Twitter users (commonly referred to as "retweeting") that made positive statements about Wealthfront.

[3] According to Wealthfront's TLH whitepaper, certain restrictions are imposed on when a client can recognize a loss for tax liability purposes, including that a client cannot trade in the same or a "substantially identical" security within 30 days of the client's transaction in that same or "substantially identical" security that generated the loss. The IRS refers to these trades as "wash sales." Wealthfront purported to monitor for such transactions because if a client does engage in such a trade within 30 days, the tax benefit could be disallowed, defeating the purpose of tax-loss harvesting.

7. In some instances, Wealthfront retweeted positive posts about its services that were made by individuals that it knew or should have known had an economic interest in promoting Wealthfront, without disclosing this conflict of interest. Among the positive posts that were retweeted by Wealthfront were posts made by: (i) Wealthfront employees; (ii) investors in Wealthfront; and (iii) Wealthfront clients to whom Wealthfront would provide free services if a reader used the client's personalized landing page link to enroll with Wealthfront. In each of these cases, Wealthfront retweeted positive posts about itself, but failed to disclose the financial interest the authors of the posts had in making positive statements about Wealthfront.

8. Wealthfront also retweeted certain posts that referred directly or indirectly to client experiences with Wealthfront as an investment adviser.

9. Wealthfront failed to adopt reasonably designed written policies and procedures for reviewing marketing materials and communications for testimonials and misleading advertisements. As a result, not all retweets were assessed by Compliance at Wealthfront to determine if they were accurate and complete, or contained testimonials, before Wealthfront posted them on its Twitter feed.

10. When Wealthfront published advertisements for its advisory services on its Twitter feed, it did not always preserve copies of advertisements distributed directly or indirectly to ten or more persons through its Twitter account. Wealthfront also used its Twitter account to send direct messages to clients or prospective clients, and did not always retain communications made through its Twitter account relating to recommendations to clients, or advice given or proposed to be given to clients or prospective clients.

Wealthfront Paid Bloggers for Client Referrals without Making the Proper Disclosures and Following the Proper Procedures

11. From approximately mid-2014 to mid-2015, Wealthfront conducted the Wealthfront Affiliate Program ("Affiliate Program"). Through the Affiliate Program, Wealthfront paid certain bloggers for successfully soliciting new clients to open Wealthfront accounts. The bloggers often would place a Wealthfront hyperlink in or near a favorable blog post about Wealthfront and/or its competitors. Wealthfront paid the bloggers based on the amount of assets a newly-referred client initially invested with Wealthfront. In total, Wealthfront paid approximately $97,000 to these participating bloggers for referring new clients to Wealthfront, and received tens of millions of dollars in assets under management via its Affiliate Program. Wealthfront made these payments based on the amount of assets deposited in new accounts from client referrals without the disclosures and documentation required under the Cash Solicitation Rule (Advisers Act Rule 206(4)-3). Under that Rule, Wealthfront was required to have a written solicitation agreement, provide certain disclosures, and receive written acknowledgement of receipt of these documents by the solicited client. Wealthfront did not fulfill any of these requirements in conjunction with the Affiliate Program.

12. During the relevant time period, Wealthfront's policies and procedures required its chief compliance officer to both review agreements with solicitors for compliance with the applicable rules, and approve any such agreements. From mid-2014 to mid-2015, Wealthfront

did not implement its written policies and procedures in connection with reviewing and approving agreements with solicitors.

13. In its Form ADV Part 2A brochure filed with the Commission on February 27, 2015, Wealthfront stated that if the company determined to use solicitors, Wealthfront would disclose this to clients in writing. It also stated that it would comply with the Cash Solicitation Rule. As described above, at the time Wealthfront was using paid bloggers as solicitors, it failed to disclose that it was using solicitors and that it was not complying with the Cash Solicitation Rule.

Violations

14. Section 206(2) of the Advisers Act prohibits investment advisers from directly or indirectly engaging "in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." A violation of Section 206(2) of the Advisers Act may rest on a finding of simple negligence. *See 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, 195 (1963)). As a result of the conduct described above, Wealthfront willfully[4] violated Section 206(2) of the Advisers Act.

15. Section 206(4) of the Advisers Act makes it "unlawful for any investment adviser . . . to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative." A violation of Section 206(4) and the rules thereunder does not require scienter. *Steadman*, 967 F.2d at 647. Rule 206(4)-1 under the Advisers Act states that it "shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business" for a registered investment adviser to "publish, circulate, or distribute any advertisement" which "refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser" or which "contains any untrue statement of a material fact, or which is otherwise false or misleading." Rule 206(4)-3 prescribes requirements a registered adviser generally must satisfy for a cash fee to be properly paid to a solicitor including, among other things, that the solicitor must provide the client with a current copy of both the adviser's and the solicitor's written disclosure documents, and that the adviser must receive from the client a signed and dated acknowledgement of receipt of these disclosure documents before or at the time of entering into any written or oral investment advisory contract with such client. Rule 206(4)-7 under the Advisers Act requires registered investment advisers to, among other things, "[a]dopt and implement written policies and procedures reasonably designed to prevent violation" of the Advisers Act and the rules thereunder. As a result of the conduct described above, Wealthfront willfully violated Section 206(4) of the Advisers Act and Rules 206(4)-1, 206(4)-3, and 206(4)-7 thereunder.

16. 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

[4] 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)).

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, Wealthfront willfully violated Section 207 of the Advisers Act.

17. Section 204(a) of the Advisers Act requires every investment adviser "who makes use of the mails or of any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser . . . [to] make and keep for prescribed periods such records (as defined in Section 3(a)(37) of the Securities Exchange Act of 1934) . . . ." Rule 204-2(a)(7) requires investment advisers registered with the Commission to retain "[o]riginals of all written communications received and copies of all written communications sent by such investment adviser relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given[] . . . ." Rule 204-2(a)(11) requires such advisers to retain "[a] copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons . . . ." As a result of the conduct described above, Wealthfront willfully violated Section 204(a) of the Advisers Act and Rules 204-2(a)(7) and 204-2(a)(11) thereunder.

Undertakings

Respondent has undertaken to:

1. Notice to Advisory Clients. Within thirty (30) days of entry of the Order, Wealthfront shall notify each of its clients of the entry of the Order and provide each with a copy of the entire Order in a form not unacceptable to the staff.

2. Certificate of Compliance. Wealthfront shall certify, in writing, compliance with the undertaking set forth above. The certification shall identify the undertaking, 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 Jeremy Pendrey, Assistant Regional Director, Asset Management Unit, Division of Enforcement, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertaking.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Wealthfront's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 204(a), 206(2), 206(4) and 207 of the Advisers Act and Rules 204-2, 206(4)-1, 206(4)-3, and 206(4)-7 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall, within fourteen (14) days of the entry of this Order, pay a civil money penalty in the amount of $250,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934. 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

Payment by check or money order must be accompanied by a cover letter identifying Wealthfront 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 Erin Schneider, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104.

D. 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.

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

By the Commission.

Brent J. Fields
Secretary