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SEC: Developments and Current Policies

Presented by:

Jason S. Flemmons

Jina Choi

Rebecca Fike

Kurt Gottschall

David Peavler

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6032 / May 23, 2022

INVESTMENT COMPANY ACT OF 1940
Release No. 34591 / May 23, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20867

In the Matter of

**BNY MELLON INVESTMENT
ADVISER, 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 AND SECTION 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 Section 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against BNY Mellon Investment Adviser, Inc. (“Respondent” or “BNYMIA”).

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 Respondent 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 Section 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 finds¹ that

Summary

1. This matter arises from material misstatements and omissions made by registered investment adviser BNYMIA concerning the consideration of Environmental, Social, and Governance ("ESG") principles to make investment decisions for certain mutual funds advised by BNYMIA (the "Overlay Funds").

2. During the period between July 2018 and September 2021 (the "Relevant Period"), BNYMIA represented to investors via mutual fund prospectuses and to those funds' boards that its affiliated sub-adviser to the Overlay Funds ("Sub-Adviser") implemented ESG principles by conducting proprietary ESG quality reviews as part of the Sub-Adviser's investment research process for all investments made by the Overlay Funds. Also during the Relevant Period, BNYMIA made other similar representations in certain written responses to requests for proposals ("RFP Responses") from other investment firms considering investments on behalf of their own clients that implied that all investments in the Overlay Funds had undergone an ESG quality review. The RFP Responses concerned the Overlay Funds as well as separately managed accounts that follow an Overlay Fund's investment strategy.

3. The Sub-Adviser's ESG principles called for identifying the ESG risks and opportunities presented by securities in which a fund might invest, and ensuring that ESG challenges were well-managed within the business strategy of any issuer in which a fund was considering an investment. As part of carrying out those principles, the Sub-Adviser maintained a Responsible Investment Team that researched ESG issues. The Responsible Investment Team prepared written ESG quality reviews for equity securities and corporate bonds. For certain mutual funds that the Sub-Adviser sub-advised, referred to as the "Sustainable Funds," the Sub-Adviser required the Responsible Investment Team's proprietary ESG quality review for all investments. For other mutual funds, including the Overlay Funds, individuals at the Sub-Adviser who selected investments were permitted to and did select investments that were not researched by the Responsible Investment Team and thus did not undergo a proprietary ESG quality review.

4. The Overlay Funds made investments that had not always received ESG quality reviews. Overlay Funds incorporate ESG considerations into investment decisions, but do not have a specific mandate to follow ESG principles for any investment. The Overlay Funds are distinct from the Sustainable Funds, also advised by BNYMIA and sub-advised by the same Sub-Adviser, which incorporate ESG investment principles as part their principal investment strategies. According to their prospectuses, the Sustainable Funds follow certain ESG-related criteria and

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.

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