

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 89588 / August 17, 2020**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18527**

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**In the Matter of**  
  
**deVere USA, Inc.**  
  
**Respondent.**

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**ORDER APPROVING MODIFIED PLAN  
OF DISTRIBUTION**

**I.**

On June 4, 2018, the Commission issued an 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”)<sup>1</sup> against deVere USA, Inc. (“Respondent”). The Order found that between at least June 2013 and March 2016, Respondent failed to make full and fair disclosure to clients and prospective clients, of material conflicts of interest regarding compensation obtained from third-party product and service providers, that Respondent’s investment adviser representatives made materially misleading or incomplete statements concerning the benefits of transferring U.K. pension assets to a Qualifying Recognised Overseas Pension Scheme (“QROPS”), that Respondent failed to satisfy disclosure requirements with respect to its Form ADV filings, and that Respondent failed to both tailor its compliance program to its actual business and to undertake many of the responsibilities laid out in its existing compliance manual.

The Order required Respondent to pay a civil money penalty of \$8,000,000.00, which has been paid in full. The Order also created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 (the “Fair Fund”), so the civil money penalty could be distributed to harmed investors. The Fair Fund has been deposited in an interest-bearing account at the United States Treasury Department’s Bureau of the Fiscal Service.

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<sup>1</sup> Advisers Act Rel. No. 4933 (June 4, 2018).

On November 16, 2018, the Division of Enforcement, pursuant to delegated authority, issued an order appointing Analytics Consulting, LLC as the fund administrator (the “Fund Administrator”) of the Fair Fund and set the administrator’s bond amount at \$8,000,000.<sup>2</sup>

On March 23, 2020, the Commission published a Notice of Proposed Plan of Distribution and Opportunity for Comment<sup>3</sup> and simultaneously posted the Proposed Plan of Distribution (“Proposed Plan”), pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Commission’s Rules”).<sup>4</sup> The Notice advised all interested persons that they may obtain a copy of the Proposed Plan from the Commission’s public website at <http://www.sec.gov/litigation/fairfundlist.htm> or by submitting a written request to Susan S. Pecaro, Trial Counsel, United States Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5876. All persons who desired to comment on the Proposed Plan could submit their comments, in writing, no later than April 22, 2020, 30 days from the date of the Notice. The Commission received five substantive comments on the Proposed Plan.<sup>5</sup>

After considering the comments on the Proposed Plan, the Commission staff, working with the Fund Administrator, has modified the Proposed Plan in response to some of the comments in order to clarify the application of the methodology (the “Modified Plan”).

After careful consideration, the Commission concludes that the Modified Plan should be approved.

## II.

### A. Public Comments Regarding the Relevant Period

Two commenters, John Wheadon and Michael D. Farley, questioned whether the Relevant Period<sup>6</sup> of June 2013 to March 2016 was sufficient. The concerns expressed in the comments were that the Relevant Period failed to take into account the time between the sale of the policy and the completion of the transfer. Therefore, a sale could conceivably have taken place during the qualification period but the transfer of monies could have fallen outside of the Relevant Period, possibly precluding a distribution payment.

In fact, the harm calculations already completed have allowed for such occurrences, but to clarify how the methodology will be applied and to address these concerns, the Modified Plan redefines the definition of “Eligible Investor” to include investors who “*opened an account with Respondent that later resulted in the transfer of money to a QROPS, who signed a contract with Respondent resulting in the transfer of money to a QROPS, or who transferred money to a*

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<sup>2</sup> Exchange Act Rel. No. 84607 (Nov. 16, 2018).

<sup>3</sup> Exchange Act Rel. No. 88452 (Mar. 23, 2020).

<sup>4</sup> 17 C.F.R. § 201.1103.

<sup>5</sup> A total of twenty-eight (28) comments were received in response to the Notice. Twenty-three (23) of the comments discussed only the commenter’s individual claim and harm and expressed a desire to be included in the distribution; these comments did not raise concerns regarding the Proposed Plan. All of the personal information relating to the commenters’ claims have been provided to the Fund Administrator.

<sup>6</sup> All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Modified Plan.

QROPS during the Relevant Period. . . .” [Emphasis added]. This modification makes clear that the meaning of “transferred” permits anyone who was in the process of transferring money to a QROPS during the Relevant Period to be eligible to receive a distribution payment, whether or not the transaction was completed during the Relevant Period.

#### **B. Public Comment Regarding Currency Conversion of Monies Transferred**

Another commenter, Matt Hughes, inquired whether the distribution payment would take into account the exchange rate at the time of the transfer rather than the exchange rate at the time of distribution for investments made in currencies other than USD.

In harm calculations already completed by the Commission, the currency has indeed been converted to USD at the time of the transfer. To address that concern, the Modified Plan adds language to the definition of Eligible Loss Amount: as follows: “*If the Eligible Investor transferred money to a QROPS in a currency other than U.S. dollars (“USD”), the Fund Administrator will convert the amount to USDs, using the appropriate exchange rate on the date of transfer.*” [Emphasis added].

#### **C. Public Comments Regarding Whether Compensating Investors for the 7% Commission Paid is the Appropriate Methodology**

Other public comments, by Peter Hare and Darren Hassey, challenged the Proposed Plan’s published methodology, saying that compensating investors for the undisclosed 7% commission did not go far enough to address the harm investors suffered as a consequence of Respondent’s violations. The commenters point out that several other incidents of misconduct by the Respondent harmed the investors, as outlined in the Order. The Commission believes that the published methodology is the most equitable plan of allocation, given the limited funds available for distribution and the fact that there will be insufficient funds to compensate investors fully for Respondent’s undisclosed commissions, and no funds available to compensate investors for other harm caused by Respondent’s misconduct outlined in the Order. Therefore, the Commission believes that the Proposed Plan’s published methodology meets the legal standard of being fair and reasonable.

### **III.**

#### **Modification and Approval of the Modified Plan**

For the reasons stated above, the Commission finds that the Modified Plan, as submitted herewith, should be approved. The described modifications do not change the Proposed Plan’s allocation methodology and, as a result, does not substantially modify the Proposed Plan; therefore, the Commission concludes that an additional notice and comment period is neither necessary nor required by the Commission’s Rules. Under Rule 1104 of the Commission’s Rules, 17 C.F.R. § 201.1104, “[i]n the discretion of the Commission, a proposed plan that is *substantially* modified prior to adoption may be republished for an additional comment period . . . .” (Emphasis added). In determining whether a distribution plan is substantially modified, the Commission considers, among other things, whether modifications revise the plan’s methodology, in particular whether such modifications could have a negative effect on the proposed eligible recipients, and whether

the modifications affect the group of persons eligible to participate in a plan. In this case, the modification is intended to clarify the steps that must have been taken by an affected investor within the Relevant Period to be eligible to participate in the distribution and to clarify how investments made in foreign currencies will be converted into USD; there is no “substantial” modification because the Proposed Plan retains the proposed distribution methodology and both the distribution payment amounts and the ultimate recipients remain unaffected. As a result, the Commission exercises its discretion to not republish the Modified Plan for additional comment.

#### **IV.**

Accordingly, it is hereby ORDERED, pursuant to Rule 1104 of the Commission’s Rules,<sup>7</sup> that the Modified Plan is approved, and it shall be posted simultaneously with this Order on the Commission’s website at [www.sec.gov](http://www.sec.gov).

By the Commission.

Vanessa A. Countryman  
Secretary

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<sup>7</sup> 17 C.F.R. § 201.1104.