UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98984 / November 20, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21801

In the Matter of **RICHARD MICHALSKI AND MICHAEL MURRAY** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, 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 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Richard Michalski ("Michalski") and Michael Murray ("Murray") (together, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant Sections 15(b) and 21C of the Securities Exchange Act Of 1934, Making Findings, And Imposing Remedial Sanctions and a Cease-and-Desist ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that

Summary

1. During the period of July 2020 through October 2021 (the "Reg. BI Period"), Respondents violated Exchange Act Rule 15*l*-1(a)(2)(ii), the Regulation Best Interest ("Reg. BI") Care Obligation, when they made a series of recommendations to four retail customers without a reasonable basis to believe that the series of recommended transactions were not excessive when taken together in light of the retail customer's investment profile, and because the series of recommended transactions placed the financial interest of the registered representatives ahead of the interest of the retail customer (the "quantitative prong" of the Care Obligation).

2. As a result of Respondents' violations of Reg. BI's component obligations, described above, they also violated Exchange Act Rule 15*l*-1(a)(1), the Reg. BI General Obligation, which requires compliance with Reg. BI's four component violations including the Care Obligation.

Respondents

3. Michalski, age 46, resides in New York, New York and has been associated with various broker-dealers since 2002, and with Laidlaw since October 2010. He currently holds Series 7 and 63 licenses.

4. Murray, age 40, resides in New York, New York and has been associated with various broker-dealers since 2005, and with Laidlaw since October 2010. He currently holds Series 7 and 63 licenses.

Relevant Entity

5. Laidlaw & Co. (UK) is a United Kingdom corporation with its main office in London, England, and branch offices in the United States, including in New York City. Laidlaw has been registered with the Commission as a broker-dealer since July 26, 2002. It is owned by Laidlaw Holding PLC, and is affiliated with Laidlaw Wealth Management, an investment adviser registered with the Commission.

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[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Facts

6. Reg. BI requires that a "natural person who is an associated person of a broker or dealer," when recommending securities transactions to a retail customer "act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interest of the broker . . . ahead of the interest of the retail customer." Reg. BI sets forth a "care obligation," which in relevant part requires that such person to exercise "reasonable diligence, care, and skill to . . . [h]ave a reasonable basis to believe that a series of recommended transactions, even if in the retail customer's best interest when viewed in isolation, is not excessive and is in the retail customer's best interest when taken together in light of the retail customer's investment profile and does not place the financial or other interest of the broker . . . ahead of the interest of the retail customer."

7. During the Reg. BI Period, Respondents recommended an investment strategy (i.e., a series of recommendations) to certain retail customers that was not in their best interest. The strategy involved frequent in-and-out trades that placed the broker's interest in generating commissions and fees ahead of the customers' interest in making a profit. With respect to one customer, the trading also was excessive in light of the customer's investment profile. As to the other customers, the fact that their investment profiles reflected a higher tolerance for risk and/or active trading did not relieve Respondents of their Care Obligation with respect to the recommendations they made. "Where a retail customer expresses a desire for 'active trading,' a broker-dealer may take this factor into consideration when evaluating a recommendation; however, the broker-dealer will nevertheless need to reasonably believe that a series of recommended transactions is in the best interest of the retail customer." Regulation Best Interest: The Broker-Dealer Standard of Conduct, Exchange Act Rel. No. 86031, 84 FR 33318, 33384 (June 5, 2019).

8. At times, Respondents employed a strategy of taking quick profits on part of a particular securities position resulting in frequent trade recommendations in these accounts. At the time the recommendations of these series of transactions were made, Respondents failed to consider the impact of the costs of the strategy, as reflected in the thresholds indicative of excessive trading that were exceeded over a 16-month period. As a result, the investment strategy of in-and-out trading recommended by Respondents placed their financial interest, as well as the firm's financial interest, ahead of the customers' interest, in violation of Reg. BI's Care Obligation.

9. The cost-to-equity ratio is the rate of return required for an account to break even, taking into account the costs, such as commissions and other fees, associated with the trading in the account. The annual turnover rate represents the total value of annual purchases made in the account divided by the account's average monthly balance. A cost-to-equity ratio of 20% or higher and an annual turnover rate of 6 or higher are thresholds that courts have considered to be indicative of excessive trading. The cost-to-equity ratios and annual turnover rates that resulted from the series of recommendations made to the four customers were all in excess of the thresholds courts have found to be indicative of excessive trading: the cost-to-equity ratios ranged from 20.38% to 33.14%

per account, and the turnover rates ranged from 7.9 to 16.5. That trading generated approximately $260,916.73 in commissions and fees, with approximately $147,996.56 of that paid to Laidlaw, $88,506.00 to Michalski and $24,414.17 to Murray.

10. Three of these retail customers indicated a "high" risk tolerance and an investment objective of "speculation" on their account opening documents. The accounts of these three retail customers had turnover rates ranging from 7.9 to 8.87 and cost-to-equity ratios ranging from 20.38% to 24.18% per account, requiring returns above that percentage in order to yield gains for the customer sufficient to cover the costs of the trading. Notwithstanding the higher risk tolerance and speculative investment objectives of these retail customers, the in-and-out trading strategy recommended by Respondents violated Reg. BI because the strategy resulted in excessive trading that placed their "financial or other interest . . . ahead of the interest of the retail customer." The trading in those three accounts during the Reg. BI Period generated approximately $177,894.89 in commissions and fees, with approximately $98,692.75 of that paid to Laidlaw, $54,787.97 to Michalski and $24,414.17 to Murray. Two customers suffered losses, and one customer had gains, but the commissions were higher than the gains—that customer made $5,638.80 in net profits, but paid $81,830.46 in commissions and fees.

11. While one customer changed his risk tolerance from "high" to "moderate" and his investment objective from "short term trading" to "long term trading" on October 29, 2020, Michalski continued to recommend the same in-and-out trading strategy to that customer. In fact, trading in that account resulted in a turnover rate of 16.5 and a cost-to-equity ratio of 33.14%, requiring returns above that percentage in order to yield gains for the customer sufficient to cover the costs of the trading. Such recommendations were unreasonable at the time they were made, were excessive and not in the customer's best interest in light of the customer's investment profile, and placed "the financial or other interest of the broker . . . ahead of the interest of the retail customer." This customer made $63,512.44 in net profits, but paid $83,021.84 in commissions and fees, with $33,718.03 of that going to Michalski.

Violations

12. As a result of the conduct described above, Respondents willfully[2] violated Exchange Act Rule 15*l*-1(a)(2)(ii)(C), the quantitative prong of Reg. BI's Care Obligation, which requires a natural person who is an associated person of a broker or dealer to have a reasonable basis to believe that a series of recommended transactions, even if in the retail customer's best interest

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[2] "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act, "'means no more than 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." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in The *Robare Group, Ltd. v. SEC*, which construed the term "willfully" for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has "willfully omit[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

when viewed in isolation, is not excessive and is in the retail customer's best interest when taken together in light of the retail customer's investment profile and does not place the financial or other interest of the broker-dealer ahead of the interest of the retail customer.

13. As a result of the conduct described above, Respondents also willfully violated Exchange Act Rule 15*l*-1(a)(1), the obligation imposed on a natural person who is an associated person of a broker or dealer to act in the best interest of the retail customer by satisfying the component obligations of Reg. BI.

Disgorgement and Civil Penalties

14. The disgorgement and prejudgment interest ordered in paragraph IV.D and E is consistent with equitable principles and does not exceed Respondents' net profits from their violations, and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid pursuant to paragraph IV.D and E in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondents Michalski and Murray cease and desist from committing or causing any violations and any future violations of Exchange Act Rules 15*l*-1(a)(1) and (2).

B. Respondents Michalski and Murray are censured.

C. Respondent Michalski be, and hereby is, suspended from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for six (6) months, effective the second Monday following the entry of this Order.

D. Respondent Michalski shall pay disgorgement of $88,506.00 and prejudgment interest of $4,260.55, for a total of $92,766.55, to the Securities and Exchange Commission. Payment shall be made in three installments: (1) $30,922.19 within ten (10) days of the entry of this Order; (2) $30,922.18 within ninety (90) days thereafter; and (3) $30,922.18 within one hundred eighty (180) days after the entry of this Order. Payments shall be applied first to post order interest, which accrues pursuant to SEC Rule of Practice 600. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

E. Respondent Murray shall, within ten (10) days of the entry of this Order, pay disgorgement of $24,414.17 and prejudgment interest of $1,143.91, for a total of $25,558.08, to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

F. Respondent Michalski shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $44,253 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

G. Respondent Murray shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $20,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payments 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 Michalski and/or Murray, respectively, as a Respondents 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 Thomas P. Smith, Jr., Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004.

H. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, prejudgment interest and penalties referenced in paragraphs IV.D, E, F, and G, above. The Fair Fund may be combined with any other fund established in a parallel proceeding that may arise out of the same facts that are the basis of this action. 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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 Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents 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 Respondents 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.

Vanessa A. Countryman
Secretary