

# SEC Charges Investment Adviser and Two Former Managers for Misleading Retail Clients

Litigation Release No. 24157 / June 5, 2018

## ***Securities and Exchange Commission v. Alderson, et al.,*** **Civil Action No. 1:18-cv-04930 (S.D.N.Y. filed June 4, 2018)**

The Securities and Exchange Commission has charged two former managers of SEC-registered investment adviser deVere USA, Inc. for allegedly making misleading statements and omissions concerning economic conflicts of interest and other issues.

➤ [SEC Complaint](#)  
➤ [Order](#)

The SEC's complaint, filed in federal district court in Manhattan, alleges that former deVere USA CEO, Benjamin Alderson, and a former manager, Bradley Hamilton, misled clients and prospective clients about the benefits of pension transfers while concealing material conflicts of interest, including the substantial compensation that Alderson and Hamilton personally stood to receive.

The SEC's complaint charges Alderson and Hamilton with violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"). The complaint also charges Alderson with aiding and abetting violations of Sections 204, 206(4) and 207 of the Advisers Act and Rules 204-2 and 206(4)-7 thereunder, and seeks an injunction, disgorgement plus interest, and civil money penalties.

The SEC separately instituted a settled administrative proceeding against deVere USA. According to the SEC order, deVere USA failed to disclose agreements with overseas product and service providers that resulted in compensation being paid to deVere USA advisers and an overseas affiliate. The SEC order also finds that deVere USA made materially misleading statements concerning tax treatment and available investment options. Without admitting or denying the SEC's findings, deVere USA consented to the SEC's order, which finds that the firm violated Sections 206(1), 206(2), 207, and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, and imposes a censure, cease-and-desist order, \$8,000,000 civil penalty, and compliance with certain undertakings.

The SEC's investigation was conducted by Michael Ellis, Haimavathi Marlier and Wendy Tepperman in the New York office. Assisting the investigation was Roseann Daniello in the New York office. The litigation against Alderson and Hamilton will be led by Ms. Marlier and Mr. Ellis, and the case is being supervised by Lara Shalov Mehraban. The SEC examination that led to the investigation was conducted by Michael Devine, Phillip Ma, Edward Perkins, and Joseph DiMaria of the New York office. The SEC appreciates the assistance of the United Kingdom's Financial Conduct Authority.

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>SECURITIES AND EXCHANGE COMMISSION,</b>	:	
	:	
<b>Plaintiff,</b>	:	<b>ECF CASE</b>
	:	
<b>- against -</b>	:	<b>COMPLAINT AND JURY</b>
	:	<b>DEMAND</b>
<b>BENJAMIN ALDERSON and</b>	:	
<b>BRADLEY HAMILTON,</b>	:	
	:	
<b>Defendants.</b>	:	
	:	
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Plaintiff Securities and Exchange Commission (the “Commission”), for its Complaint against Defendants Benjamin Alderson (“Alderson”) and Bradley Hamilton (“Hamilton”) (collectively, “Defendants”), alleges as follows:

**SUMMARY**

1. Alderson, the former Chief Executive Officer (“CEO”) of Commission-registered investment adviser deVere USA, Inc. (“DVU”), and Hamilton, a former DVU Area Manager, defrauded hundreds of clients and prospective clients resident in the United States (“US”) by misleading them about the benefits of irreversibly transferring their United Kingdom (“UK”)

pensions to an offshore pension plan while concealing serious conflicts of interest, including the lucrative commissions Alderson and Hamilton each stood to—and did—receive. In doing so, Defendants violated the fiduciary duty that every investment adviser has to its clients and prospective clients: to put the client’s best interests first, employ utmost honesty, and fully disclose all material information, including actual and potential conflicts of interest.

2. From approximately June 2013 to March 2017 (the “Relevant Period”), DVU’s client and prospective client base consisted primarily of British expatriates who resided in the US and had pensions based in the UK from prior employment. Alderson and Hamilton were investment adviser representatives (“IARs”) of DVU and recommended that these investors transfer their UK pensions to an offshore pension plan known as a Qualifying Recognised Overseas Pension Scheme (“QROPS”). During the Relevant Period, Alderson and Hamilton were the top salespeople within DVU, placing first and second, respectively, in terms of commissions generated from QROPS transfers.

3. Though Alderson and Hamilton were investment advisers with a fiduciary duty to provide full and fair disclosure of all material facts, they nonetheless provided advice that was self-interested and designed to push clients and prospective clients toward a QROPS transfer, which, when effected, generated for Defendants millions of dollars in undisclosed commissions.

4. First, Defendants concealed their significant financial motivation to consummate a QROPS transfer. Upon transferring a client’s UK pension assets to a QROPS, DVU’s overseas affiliate (the “Overseas Affiliate”) received an immediate commission equivalent to 7% of the pension transfer value from a third party firm (the “7% Upfront Commission”). The Overseas Affiliate then paid the DVU IAR who recommended the QROPS transfer half of this amount,

which, from June 2013 to March 2016, totaled approximately \$2.6 million for Alderson and \$2.1 million for Hamilton in undisclosed compensation.

5. Alderson and Hamilton knew that the 7% Upfront Commission constituted their primary form of compensation and that it was undisclosed. Moreover, when clients and prospective clients asked about fees or how Defendants were remunerated, Defendants misleadingly referred to a 1% advisory fee, while purposely omitting mention of the 7% Upfront Commission or their share thereof. Alderson also instructed other DVU IARs to make the same misleading representations to clients and prospective clients. In addition, Defendants also failed to disclose additional commissions that they received in connection with their clients' QROPS investments and currency conversions.

6. Second, Alderson and Hamilton misleadingly touted QROPS as offering what they called "open architecture," which they explained as giving clients investment flexibility through access to over 15,000 securities. They also instructed and trained other DVU IARs to do the same. In reality, however, Defendants were well aware that DVU IARs were only permitted to recommend to clients, and allow clients to choose from, a limited number of investment options that at most, was less than one hundred, not thousands.

7. Between June 2013 and at least the fall of 2014, DVU IARs were permitted to recommend only a handful of European multi-asset funds and certain structured notes, all of which paid front-end load fees (the "Front-End Fees") to the Overseas Affiliate. The Overseas Affiliate, in turn, split the fee with the DVU IAR who recommended that the client purchase the European fund or structured note. Alderson and Hamilton each received more than \$100,000 in Front-End Fees that they misleadingly presented to clients as required "entry fees" without disclosing their financial interest in such fees.

8. Third, Defendants misleadingly touted the tax benefits of a QROPS to investors without informing them of tax risks, including that a QROPS transfer could be a taxable event in the US. Defendants told prospective clients that QROPS transfers were not taxable by the Internal Revenue Service (“IRS”) while omitting mention of IRS guidance, and views held by several accounting and tax professionals, to the contrary. Defendants also falsely claimed that alternatives to QROPS transfers—including leaving the pension in the UK or transferring it to a self-invested account known as a Self-Invested Personal Pension (“SIPP”)—would subject the pension holder to certain tax consequences, such as double taxation by the US and UK, despite knowing about a UK-US tax treaty that resulted in a contrary outcome. Defendants instructed and trained other DVU IARs to make similar misrepresentations and omissions to potential clients regarding tax treatment.

9. Alderson, the senior-most officer of DVU, was responsible for and involved in false filings that DVU made with the Commission, which, among other things, failed to disclose the compensation DVU’s IARs received from third parties. Alderson also failed to ensure that DVU’s compliance program was tailored to its QROPS business and failed to implement many of DVU’s written compliance policies and procedures, all of which vested him with responsibility for doing so.

**VIOLATIONS**

10. By engaging in the conduct alleged herein, Defendants violated Section 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. §§ 80b-6(1) and 80b-6(2), or, in the alternative, Defendants are liable under Advisers Act Section 209(f), 15 U.S.C. § 80b-9, for aiding and abetting DVU’s violations of Advisers Act Sections 206(1) and 206(2), 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

11. In addition, Alderson is liable under Advisers Act Section 209(f), 15 U.S.C. § 80b-9, for aiding and abetting DVU’s violations of Advisers Act Sections 204, 206(4) and 207, 15 U.S.C. §§ 80b-4, 80b-6(4) and 80b-7, and Rules 204-2 and 206(4)-7 thereunder, 17 C.F.R. §§ 275.204-2 and 275.206(4)-7.

12. Unless Defendants are permanently restrained and enjoined, they will again engage in the acts, practices, transactions, and courses of business set forth in this complaint and in acts, practices, transactions, and courses of business of similar type and object.

**NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT**

13. The Commission brings this action pursuant to authority conferred by Advisers Act Section 209(d) and (e), 15 U.S.C. § 80b-9(d) and (e).

14. The Commission seeks a final judgment: (a) restraining and permanently enjoining Defendants from engaging in the acts, practices and courses of business alleged against them herein and from committing future violations of the above provisions of the federal securities laws; (b) ordering Defendants to disgorge their ill-gotten gains and to pay prejudgment interest thereon; (c) imposing civil money penalties pursuant to Advisers Act Section 209(e), 15 U.S.C. § 80b-9(e); and (d) ordering such other and further relief the Court may deem just and appropriate.

### JURISDICTION AND VENUE

15. This Court has jurisdiction over this action pursuant to Advisers Act Sections 209(d), 209(e), and 214, 15 U.S.C. §§ 80b-9(d), 80b-9(e), and 80b-14.

16. Venue is proper in this district pursuant to Advisers Act Section 214, 15 U.S.C. § 80b-14. Many transactions, acts, practices, and courses of business constituting the violations alleged herein occurred within this district. For example, Defendants worked from DVU's New York, NY office during the Relevant Period and certain of the clients and prospective clients that Defendants communicated with were located in this district.

17. In connection with the conduct alleged in this Complaint, Defendants, directly or indirectly, made use of the mails or the means or instrumentalities of, interstate commerce, including communicating by telephone and email with hundreds of clients located throughout the United States.

### DEFENDANTS

18. **Alderson, age 40, is a UK citizen who resides in the Bahamas.** Alderson was **DVU's CEO from approximately August 2012 to January 2017, a DVU director from 2013 to 2016, and the sole director from 2014 to 2016.** Alderson was also a DVU IAR and Senior Area Manager from August 2012 to April 2017. During his time at DVU, Alderson solicited and maintained advisory relationships with over 100 clients and ultimately managed over 30 DVU IARs and other employees. In addition to the compensation that Alderson received with respect to clients that he personally advised, **Alderson was also entitled to receive a profit share for DVU that was equal to 20% of DVU's net profits on a quarterly basis.** Alderson is currently the CEO of **Touchstone Advisory Ltd., a Bahamas entity that is the primary shareholder of Commission-**

registered investment adviser Touchstone Advisory, LLC. Alderson is an IAR for Touchstone Advisory, LLC, which has its principal place of business in New York, NY.

19. **Hamilton, age 36, is a citizen and resident of the UK.** Hamilton was an Area Manager for DVU's New York, NY office and a DVU IAR from approximately April 2013 to May 2017. During his time at DVU, Hamilton solicited and maintained his own advisory relationships with over 100 clients and also served as Area Manager for DVU's New York office, with a few DVU IARs, as well as other employees, reporting to him. In addition to the compensation that Hamilton received with respect to clients that he personally advised, Hamilton also received a percentage of the payouts that the DVU IARs assigned within his area received. Hamilton is currently the Chief Compliance Officer ("CCO") and an IAR for Commission-registered investment adviser Blacktower Financial Management (US) LLC, which has its principal place of business in New York, NY.

#### **RELATED ENTITY**

20. **DVU** was incorporated in Florida in 2003 as deVere and Partners, Inc. and changed its name to deVere USA, Inc. in 2011. On June 5, 2013, DVU became a Commission-registered investment adviser. DVU's principal place of business has been in New York, NY since at least 2013.

#### **FACTS**

##### **I. Background of DVU's OROPS-based Advisory Business.**

21. During the Relevant Period, DVU's IARs, including Alderson and Hamilton, solicited prospective clients primarily through social media sites such as LinkedIn. DVU's clients and prospective clients were primarily US-resident British expatriates with defined benefit or defined contribution pensions valued at £100,000 or greater from past UK



employment.<sup>1</sup> DVU's primary business was advising these clients to elect to take a cash equivalent transfer value from their UK pension provider and transfer it to a QROPS.

22. During the Relevant Period, a UK defined benefit or defined contribution pensioner was generally able to transfer, pre-retirement, a cash equivalent value (as calculated by the pension provider) to another pension plan in the UK such as a SIPP, or offshore to a QROPS, in exchange for giving up any rights and benefits under their previously-held pension plan.

23. If a prospective client had a pension transfer value of at least £100,000, and did not intend to return to live in, or had not lived in, the UK for at least five years, Defendants and DVU's other IARs typically recommended that the clients transfer their pension's cash equivalent value to a QROPS.

24. Defendants and other DVU IARs recommended that the clients utilize certain QROPS-related product and service providers from which the Overseas Affiliate, Defendants and the other IARs received millions of dollars that were not disclosed to their clients and prospective clients. These recommended product and service providers included Malta-based QROPS trustees (the "Trustee Firms") and an investment-linked policy issued by offshore insurance companies that served as custodial accounts for the QROPS investments (the "Custodian Firms").

25. Defendants and the other DVU IARs also made recommendations about the purchase and sale of underlying securities made through the custodial account.

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<sup>1</sup> Defined benefit pensions generally pay a defined amount from retirement age until death, with annual inflation adjustments, and a continued payment to a surviving spouse typically equal to 50% of the defined amount until the spouse's death. Defined contribution pensions are generally akin to US 401(k) plans in which an employee can choose from a defined set of investment options, take periodic or other withdrawals upon retirement age, and select a beneficiary who would acquire the remaining assets upon death.

26. Defendants and the other DVU IARs presented these various elements of the QROPS collectively as a package, recommending that clients forgo guaranteed defined benefits and transfer a cash equivalent value into an offshore pension scheme where DVU would manage their investments on a non-discretionary basis.

27. Clients who transferred and invested their pension assets with the QROPS-related third-parties that Defendants and other DVU IARs recommended paid substantial fees to the third-parties in connection with their investment. This included, but was not limited to: (i) flat and annual fees paid to the respective Trustee Firm; (ii) a 10-11% fee paid to the respective Custodian Firm, assessed at 1-1.1% per annum for 10 years on the cash equivalent value transferred to the QROPS, with an early cancellation policy that guaranteed full payment, as well as fixed annual and transactional charges; (iii) Front-End Fees paid to mutual funds and structured note providers in connection with underlying security investments that Defendants recommended; (iv) fees paid to a foreign currency exchange provider, which was a subsidiary of the Overseas Affiliate (the “FX fees”); and (v) an advisory fee paid to DVU equivalent to 1% of assets under management (the “1% AUM fee”).

28. Defendants and other DVU IARs misleadingly presented the third-party fees as required charges collected by the product and service providers while omitting that the Overseas Affiliate and DVU IARs would receive as commissions substantial portions—and in some cases 100%—of the fees collected. Thus, the clients never knew the significant financial motivation Defendants and other DVU IARs had to recommend QROPS transfers to the exclusion of other options, such as leaving the pension in the UK or transferring its cash equivalent value to a SIPP.

29. Defendants made material misstatements and omissions relating to the compensation agreements between the third-party providers and the Overseas Affiliate, as well

as the interests of DVU IARs therein. Under Alderson's lead, DVU also made material misstatements and omissions relating to the compensation agreements between the third-party providers and the Overseas Affiliate in its Form ADVs filed with the Commission and delivered to clients.

30. In March 2017, the UK changed its tax laws with respect to QROPS transactions. Under the new law, future QROPS transfers were subjected to a 25% tax, unless the QROPS was based in the country in which the individual was residing, with certain exceptions. Faced with this new tax, DVU's QROPS business ceased.

**II. Defendants Failed to Disclose, and Made Misleading Statements Concerning, Compensation Received and Related Conflicts of Interest.**

31. During the Relevant Period, DVU, under Alderson's stewardship, failed to disclose all of the significant financial conflicts of interest it and its IARs faced in recommending and effecting QROPS transfers. These conflicts of interest stemmed from three forms of undisclosed compensation. First, the Custodian Firm paid to the Overseas Affiliate the 7% Upfront Commission, which the Overseas Affiliate, in turn, split with the DVU IAR who recommended the QROPS transfer. Second, the Overseas Affiliate split the Front-End Fees that clients paid to certain funds and notes with the DVU IAR who recommended those investments. Third, the Overseas Affiliate split the FX Fees that DVU's clients paid to one of the Overseas Affiliate's subsidiaries—a foreign exchange provider—with the DVU IAR who made the QROPS recommendation.

**A. The 7% Upfront Commission.**

32. DVU, acting through the Defendants and other DVU IARs, failed to disclose from June 2013 to March 2016 that the Custodian Firms its IARs recommended to clients paid the 7% Upfront Commission.

33. Upon a DVU client's transfer to a QROPS, the Custodian Firms paid the 7% Upfront Commission to the Overseas Affiliate. The Overseas Affiliate then paid half of this amount, or roughly 3.5% of the pension cash transfer value, to the DVU IAR who recommended the QROPS transfer. Such payments constituted the DVU IAR's primary form of compensation. These payments financially incentivized the IARs, including Defendants, to recommend QROPS—and only QROPS—and to recommend the use of particular QROPS-related third-parties to the exclusion of others. As such, these payments were a conflict of interest.

34. For example, if a client agreed, based on the advice and recommendation of a DVU IAR, to transfer a UK pension having a cash equivalent transfer value of £200,000 to a QROPS, the Overseas Affiliate would receive a payment of £14,000 from the Custodian Firm and the Overseas Affiliate would pay £7,000 to the DVU IAR who made the recommendation.

35. The Custodian Firms paid the 7% Upfront Commission out of their own assets, but the basis for this payment was the Custodian Firm's future collection of fees from the DVU client, assessed at 1-1.1% per annum for 10 years on the cash equivalent value transferred to the QROPS with an early cancellation policy that guaranteed full payment. Neither DVU nor Defendants disclosed to clients or prospective clients that their payment of fees to the Custodial Firms was not primarily for custodial services, but rather largely compensated DVU's IARs, in the form of the 7% Upfront Commission, creating an undisclosed material conflict of interest.

36. Despite the fact that the 7% Upfront Commission was the DVU IAR's primary form of compensation, Defendants represented DVU as being "fee only" or primarily compensated by the 1% AUM fee charged by DVU in email and other communications with clients and prospective clients. The 1% AUM fee was debited from the client's QROPS account and the DVU IAR who advised the client received a portion of the 1% AUM fee. DVU

introduced the 1% AUM fee in the spring of 2014, but continued to collect the 7% Upfront Commission as well.

37. From June 2013 until it was disclosed in March 2016, Alderson and Hamilton received approximately \$2.6 million and \$2.1 million, respectively, from the 7% Upfront Commission the Custodial Firms paid to DVU's Overseas Affiliate. In contrast, during this same period, Alderson and Hamilton received only approximately \$113,000 and \$75,000, respectively, from their share of the 1% AUM fee.

38. Both Defendants knew, or recklessly disregarded, that the 7% Upfront Commission was their primary form of compensation, that it constituted a material conflict of interest, and that it was undisclosed.

39. Beyond failing to disclose that they were financially incentivized to recommend QROPS transfers, Defendants also made materially misleading statements concerning their compensation that further concealed the commissions.

40. For example, Alderson contributed to and was featured in an article in February 2014 that falsely portrayed DVU as having "adopted a fee-only remuneration business model that is all but unrecognisable from the commission-based one it has traditionally used in other parts of the world, at least until now." The article further attributes to Alderson that DVU's fee-only business model was "because it had to: the US, like the UK and certain other markets, has moved to end the use of commission as a means of paying for financial advice." Alderson attached this article to e-mails to prospective QROPS clients as part of his sales pitch and members of Alderson's sales team did the same, copying Alderson on the e-mails.

41. Alderson's statements in and his provision of the February 2014 magazine article gave the false impression to prospective clients and current clients that DVU's remuneration

consisted solely of an advisory fee, when in fact the bulk of the remuneration that Defendants and DVU's other IARs received was their share of the hefty 7% Upfront Commission. Alderson knew, or recklessly disregarded, that his statements were materially false and/or deceptive because he knew the bases for his and other DVU IAR's compensation and that such compensation was being concealed.

42. In July 2014, when trying to convince an existing client to agree to pay the 1% AUM fee or some portion thereof, Alderson falsely stated to the client that, ". . . we are taking zero fee revenue from [your] account, zero trail income . . ." Alderson knew, or recklessly disregarded, that this statement was materially misleading because he received a substantial commission in connection with the client's account from the undisclosed 7% Upfront Commission, Front-End Fees, and FX Fees, as well as receiving a "trail" payment of 0.75% annually from the European fund that the client had been put into at his recommendation.

43. Also in July 2014, Alderson responded to a prospective client who inquired about fees by stating that there are "three moving parts"—the custodian, trustee, and DVU—which are all necessary and therefore fees cannot be reduced. With respect to DVU's role, Alderson described that because they are a U.S. registered adviser they "do not charge commission, thus all the approved funds we utilize we enter at the NAV price with no upfront fees or commissions." Alderson knew, or recklessly disregarded, that his statements were misleading because he presented the three parts as unconnected third parties receiving separate compensation, while failing to disclose the 7% Upfront Commission.

44. Further, Alderson instructed other DVU IARs and employees that if a client asked how they are compensated, they should say that they receive a 1% advisory fee, without mentioning the 7% Upfront Commission or other third-party compensation received.

45. In addition, throughout the Relevant Period, Defendants provided to prospective clients Form ADV Part 2B brochure supplements that materially misrepresented information about their compensation, which they knew, or recklessly disregarded, was false and misleading. For example, Alderson's brochure supplement stated: "deVere is required to disclose information regarding any arrangement under which Benjamin J. Alderson receives an economic benefit from someone other than a client for providing investment advisory services. deVere has no information to disclose in relation to this item." Hamilton's brochure supplement during the Relevant Period made the same misrepresentation.

46. Hamilton also made materially misleading statements to prospective clients and clients regarding his compensation, concealing the conflict of interest presented by the undisclosed commissions he received. When a prospective client asked Hamilton in December 2014 whether there was any way that he could reduce DVU's 1% advisory fee, Hamilton misleadingly responded that, ". . . we don't typically reduce the 1% as that's how we earn the vast majority of our money." Additionally, when another prospective client asked questions in April 2015 concerning the 1% advisory fee, Hamilton responded, "[t]he 1% per annum charge is how deVere USA get paid [sic] and teh [sic] typical business model for all wealth management in the USA." These statements were materially misleading because as Hamilton knew, or recklessly disregarded, most of his compensation stemmed from the undisclosed 7% Upfront Commission.

47. Further, even after DVU disclosed the 7% Upfront Commission in Part 2A of its Form ADV in March 2016, Hamilton (and DVU employees working for him and using his e-mail address) continued to send to prospective clients an outdated version of DVU's disclosure brochure that did not contain the required disclosure. Hamilton knew, or recklessly disregarded,

that the brochure had been updated because in April and May 2016 DVU's CCO notified all DVU employees, including Hamilton, of updates to the disclosure brochure and instructed them to provide the updated brochure to prospective clients going forward.

**B. The Front-End Fees.**

48. Until at least the fall of 2014, DVU IARs were only permitted to recommend a handful of European multi-asset funds and structured notes, which appeared on an internal approved list. The Overseas Affiliate had arrangements with each of these product managers to charge Front-End Fees of up to 5% of the amount invested that would be paid to the Overseas Affiliate. The Overseas Affiliate in turn paid approximately half of the Front-End Fees to the DVU IAR who recommended the investment, including Defendants.

49. Defendants and other DVU IARs falsely presented the Front-End Fees as "entry fees" that were collected by the investment manager and concealed the fact that these fees compensated the Overseas Affiliate and themselves. As such, the Front-End Fees presented another undisclosed conflict of interest by financially motivating Defendants and other DVU IARs to not only lure clients into QROPS transfers with promises of an "open architecture" investment structure, but to then recommend investments that compensated them once the clients' assets were irreversibly transferred to the QROPS. Defendants knew, or recklessly disregarded, that they had an economic interest in the Front-End Fees, but did not disclose to clients the receipt of such compensation or the related conflict of interest that it presented.

50. By the fall of 2014, DVU started waiving the Front-End Fees for all clients who purchased European multi-asset funds and structured notes. Also around this time, DVU IARs were permitted to expand their investment recommendations to include certain index funds and ETFs, in addition to the European multi-asset funds and structured notes. Indeed, once



Defendants lacked the economic incentive to recommend the European multi-asset funds and structured notes, Defendants began recommending lower-cost investments to clients.

**C. The FX Fees.**

51. Defendants and other DVU IARs recommended that certain clients convert all or a portion of their UK pension cash equivalent value, which was in British Pounds, to US Dollars or Euros when transferring it to a QROPS. A subsidiary of the Overseas Affiliate was the foreign exchange provider for this conversion. This subsidiary generally charged an FX Fee equal to 1% of the amount of currency exchanged and paid a portion of this fee to the DVU IAR making the recommendation, including Defendants.

52. Neither Defendants nor DVU disclosed to clients this arrangement, the IARs' receipt of a portion of the FX Fees, or the economic conflict of interest that it presented, until at least March 31, 2017.

**D. Alderson Created and Maintained a Culture within DVU that Perpetuated Conflicts of Interest.**

53. During the Relevant Period, and under Alderson's leadership, DVU employed a "draw" pay system in which the Overseas Affiliate paid IARs and other employees a monthly draw that was offset by the commissions that they generated, such as the 7% Upfront Commission. If the DVU IAR or other employee did not generate sufficient commissions to offset the "draw," they became indebted to the Overseas Affiliate. This pay system incentivized DVU's IARs to generate as many new QROPS transfers as possible.

54. Alderson regularly urged DVU's IARs to maximize the undisclosed commissions. He led Monday morning sales meetings during which he encouraged DVU employees to "shout out" their recently obtained and anticipated business and commissions to Alderson. During these

meetings, Alderson pushed DVU employees to increase commissions and called for rounds of applause for those who generated high commissions and criticized those who had not.

55. Alderson tracked commissions and client meetings generated by DVU employees on a dry erase board during the Monday morning meetings. He gave a “tic” or a mark, which was visible to all meeting attendees, to employees who generated commissions and/or prospective QROPS client meetings, thereby publicly incentivizing employees to compete with one another and to increase their commissions.

56. Alderson knew, or recklessly disregarded, that his regular instructions to DVU employees to increase commissions and his public praise and criticism concerning commissions further incentivized and pressured DVU employees to generate the very commissions that he and other DVU IARs did not disclose, that he failed to ensure DVU was disclosing, and that he actively took steps to conceal from and mislead prospective and existing clients about.

### **III. Defendants Misrepresented the Investment Options Available to QROPS Clients.**

57. Defendants falsely pitched QROPS to prospective clients as providing the benefit of “open architecture” investment flexibility in which clients would have access to over 15,000 securities. Hamilton told prospective clients they would have “every single mutual fund, index tracker, individual stock . . . the whole world to go at” in a QROPS. He told another prospective client that a QROPS would have “complete open architecture, so 20,000 different investments to go at, every single mutual fund, index tracker, individual equity.” Alderson similarly told prospective clients they would “have total control on how [their] money is invested.”

58. Defendants did not disclose the material limitations known to them arising from both the internal set of approved investments at DVU and the restrictions imposed by the QROPS trustees when describing the purported investment flexibility benefits of a QROPS to

prospective clients. Only when clients provided input as to the investment choices that they wanted to make (after the irreversible QROPS transfer had been completed and commission payments to Defendants had been made) did Defendants tell clients about the limits to their investment options.

59. Both Alderson and Hamilton instructed and trained DVU employees to make similar statements concerning QROPS investment flexibility and investment options to prospective clients.

60. Defendants knew, or recklessly disregarded, that their statements regarding “open architecture” investment flexibility with the ability to choose from over 15,000 investments were false. Defendants knew that DVU only recommended investments from a more limited internal set of approved investments that, at most, numbered less than one hundred. Moreover, Defendants knew that the Trustee Firms that Defendants recommended to clients placed limits on a client’s investment choices, including by prohibiting self-direction.

61. For his part, Hamilton continued to misrepresent to clients that they would have investment flexibility and access to thousands of investments even after receiving an approved list of investments that limited the number of available investment options, and being reprimanded for making such statements to clients by another DVU area manager.

**IV. Defendants Made Misleading Statements Concerning Tax Treatment to Their Clients and Prospective Clients.**

62. Defendants and other DVU IARs misled prospective clients about material facts concerning the tax treatment applicable to QROPS versus UK pensions for US residents. Defendants repeatedly touted purported tax benefits of a QROPS transfer while omitting the risk that a transfer by a US resident from a UK pension to a Malta-based QROPS would be treated by the IRS as a distribution subject to US income taxes. Instead, Defendants and other DVU IARs

pitched a QROPS transfer as having significant tax advantages over leaving a UK pension as-is or transferring it to a SIPP. In some instances, Defendants told prospective clients that the transfer to a QROPS was definitively a nontaxable event.

63. Defendants and other DVU IARs were aware of a 2011 IRS Chief Counsel Letter (the “IRS Chief Counsel Letter”) that specifically addressed the application of the US-Malta and US-UK income tax treaties to certain transfers between pension funds. The letter stated that a transfer from a UK pension to a UK pension “would not be taxed currently as income” while a transfer from a UK pension to Malta pension “would not be a pension scheme within the meaning of [the US-UK treaty] because it is not established in one of the two Contracting States” (i.e., the UK or US) and that “[t]herefore, if the transfer were to a pension scheme established in a third country, instead of to another pension scheme established in the [UK], the transfer could be treated as distribution that would be subject to taxation as income of the individual...”

64. In addition to the IRS Chief Counsel Letter, Defendants also knew that several accounting and tax professionals viewed QROPS transfers as potentially or likely taxable events by the IRS for US residents, with income tax due on the transfer amount (plus interest and potential penalties if not timely paid).

65. When prospective clients pressed for more information regarding the taxability of QROPS transfers, Alderson instructed DVU employees to inform prospective clients that DVU had an “opinion” indicating that the QROPS transfer should not be a taxable event and/or refer these clients to the accounting firm partner who had drafted a technical memorandum supporting the position that the QROPS transfer was not a taxable event (the “Tax Memo”). Alderson never told DVU employees to inform prospective clients that there were conflicting views on the issue.

66. Defendants knew, or recklessly disregarded, that if a prospective client became aware that there was a risk that their QROPS transfer could be a taxable event, he or she may choose not to transfer their pension to a QROPS, depriving Defendants of commissions. Defendants, despite being aware that there were—at a minimum conflicting views on the taxability of QROPS transfers—nonetheless concealed such information while making definitive statements touting the tax benefits of a QROPS transfer to prospective clients.

67. Defendants also misled prospective clients by telling them that there was purported negative tax treatment of non-QROPS options, i.e. leaving the UK pensions in place or transferring a cash equivalent value to a SIPP. For example, Hamilton repeatedly told prospective clients that their existing UK pension would result in UK inheritance tax being levied, and in some instances, represented that this would be levied twice, first when the spouse inherits the pension and then again when the spouse dies. In fact, UK pensions had not been subject to UK inheritance tax since at least 2011, a fact which Hamilton was told on multiple occasions, yet he continued to make false assertions on this point. As another example, Alderson told clients that upon retirement age, a 25% withdrawal (which is tax free in the UK) from their existing UK pension or a SIPP would definitively be subject to US taxes. Alderson, however, knew, or recklessly disregarded, that the Tax Memo itself stated that a 25% withdrawal from a UK pension would not be subject to US taxes.

68. In addition, Defendants told numerous prospective clients that any income paid to them from their existing UK pension would be taxed by both the US and UK, or the higher of the two, while omitting the material fact that the US-UK tax treaty provides that taxation of such payments from pensions shall be only by the country where the beneficiary is resident. Further, they omitted that US residents could provide the UK pension provider with a UK tax form so

that UK income taxes would not be withheld (on the basis that they would be paying US income taxes on the distribution in accordance with the US-UK tax treaty). Defendants knew, or recklessly disregarded, that these statements regarding taxation by both US and UK tax authorities were false and/or materially misleading because they were aware of the provisions of the US-UK tax treaty as well as the Tax Memo's statements that receipt of pension payments from a UK pension plan by a US resident would only be subject to tax in the US under the US-UK income tax treaty.

69. Alderson instructed Hamilton to train other DVU IARs and employees on effective sales tactics during the Relevant Period. However, Alderson knew or recklessly disregarded that Hamilton repeatedly made false and misleading statements about material facts to prospective and existing clients.

70. For example, a memo that Hamilton created and used with certain prospective QROPS clients (the "Hamilton Memo") misled those clients about material facts concerning taxation if their UK pensions were left as-is or transferred to a SIPP. The inaccuracies and misleading statements in the memo included: (1) misstating the age at which UK defined contribution pension holders could access their funds and 25% lump sum distributions; (2) incorrectly stating that those receiving funds from a UK pension when their spouse (the pension holder) dies would be subject to UK inheritance tax while touting that in a QROPS there is no UK inheritance tax exposure; and (3) repeatedly speculating that the 25% lump sum permitted for a UK pension was "likely" or "very likely" to be capped at approximately £36,000.

71. Alderson was informed as early as February 1, 2015 that the Hamilton Memo was misleading. In fact, the then-CCO of DVU emailed Alderson regarding the Hamilton Memo, stating "I have to tell you how shocked I was with the extent of the errors and inaccuracies. This

opens us individually and as a firm to huge liability. Please let me know if there is anything you need for me to do.”

72. Although Alderson told Hamilton to revise his memo, Hamilton and other DVU employees reporting to Hamilton continued to use similar inaccurate and misleading language as contained in the Hamilton Memo when pitching QROPS to prospective clients. For his part, Alderson, though he knew, or recklessly disregarded, that Hamilton provided misleading information to prospective clients, continued to tap Hamilton to provide sales training to DVU’s IARs and employees and encouraged such IARs and employees to attend these training sessions.

**V. Alderson Aided and Abetted DVU’s Material Misrepresentations and Omissions in DVU’s Form ADVs Filed with the Commission and Delivered to Clients.**

73. As a Commission-registered investment adviser, DVU was required by the Advisers Act and rules thereunder to file Form ADVs with the Commission. Part 2 of the Form ADV, which requires investment advisers to prepare narrative brochures in plain English, is the primary disclosure document that investment advisers provide to their clients and requires disclosure of information about the adviser’s fee schedule and conflicts of interest. DVU was required to deliver to clients a Form ADV Part 2A brochure for the firm and a Form ADV Part 2B Brochure Supplement about the specific IAR who actually provided the advisory services to the particular client.

74. During the Relevant Period, Item 5 of the Part 2A Brochure required disclosure of how the investment adviser was compensated for its advisory services, including, whether the adviser or any of its supervised persons “accepts compensation for the sale of securities or other investment products” and an explanation that this practice constitutes a conflict of interest. Similarly, Item 5 of the Part 2B Brochure Supplement for each IAR required, “[i]f someone who is not a client provides an economic benefit to the [IAR] for providing advisory services” for the

adviser to “generally describe the arrangement.” DVU’s Part 2A firm brochure and Part 2B brochure supplements failed to comply with these disclosure requirements.

75. Moreover, before July 20, 2015, DVU’s Part 2A firm Brochure Item 5 disclosure stated that DVU’s 1% AUM fee “is exclusive of, and in addition to brokerage commissions, transaction fees, and other related costs and expenses which are incurred by the client,” and misleadingly stated that DVU “does not [] receive any portion of these commissions, fees, and costs.” Similarly, the Part 2B Brochure Supplements for Defendants and other DVU IARs, misrepresented that they received no economic benefit from someone other than a client for providing investment advisory services.

76. DVU’s failure to comply with the Form ADV disclosure requirements continued even after an examination by staff in the Commission’s Office of Compliance Inspections and Examinations that led to the issuance of a deficiency letter to DVU in March 2015 (the “March 2015 Deficiency Letter”). The findings of the March 2015 Deficiency Letter included that DVU had failed to disclose the 7% Upfront Commission and that there were inaccuracies in DVU’s Form ADV filings with respect to its number of clients and assets under management, among other items.

77. In fact, DVU did not disclose the 7% Upfront Commission, which resulted in millions in undisclosed compensation for its IARs, until at least March 30, 2016, more than one year after receiving the March 2015 Deficiency Letter. DVU never disclosed the IARs’ receipt of the Front-End Fees and first disclosed their receipt of FX Fees only on March 31, 2017.

78. Alderson was DVU’s CEO and senior-most officer, reviewed its disclosures prior to DVU filing them with the Commission, and authorized the filings. However, Alderson, despite knowing exactly how DVU’s IARs were compensated, and knowing or recklessly



disregarding the conflicts of interest presented by DVU's compensation model, failed to ensure that DVU's Form ADV was accurate. Alderson did not read the Form ADV instructions, failed to take steps to understand DVU's disclosure requirements, and failed to ensure that DVU's Form ADV filings accurately reflected DVU's business or were promptly and adequately amended following DVU's receipt of the March 2015 exam deficiency letter.

**VI. Alderson Aided and Abetted DVU's Compliance and Books and Records Violations.**

79. Alderson knew, or recklessly disregarded, that as a Commission-registered investment adviser, DVU was obligated to adopt and implement written policies and procedures reasonably designed to prevent violation by the firm and its supervised persons of the Advisers Act and rules thereunder. DVU's written policies and procedures were not reasonably designed because, among other things, they were not tailored to DVU's actual business and did not reflect the actual practices of the firm. In particular, prior to at least December 2015, DVU did not have written policies and procedures that addressed its QROPS business and the conflicts of interest posed by the receipt of compensation from third-parties in connection with its QROPS-related recommendations. In addition, DVU did not follow or implement many of its existing written policies and procedures as set forth in DVU's compliance manual.

80. Alderson authorized the adoption of DVU's written policies and procedures and received a copy of them in the form of a compliance manual. Alderson certified that he read the compliance manual, fully understood its contents and assumed the responsibilities and obligations assigned to him in the compliance manual. Nevertheless, Alderson failed to take steps to either implement the numerous responsibilities assigned to him in the compliance manual or to delegate to others such responsibilities.

81. For example, although DVU's compliance manual assigned supervisory responsibilities to Alderson for the creation and maintenance of a supervisory file for each person supervised, Alderson did not create any such files and did not instruct anyone else to do so.

82. As a Commission-registered investment adviser, the Advisers Act and rules thereunder also required DVU to maintain certain books and records. For example, DVU was required to maintain formal order memoranda for each order placed for its clients and to preserve all written communications received and sent relating to any recommendation or advice made or proposed to clients. DVU failed to do so.

83. DVU's compliance manual assigned books and records responsibilities to Alderson. Alderson knew, or recklessly disregarded, that as a Commission-registered investment adviser, DVU was required to make and keep certain books and records and that he was the designated individual responsible for books and records compliance. Nevertheless, Alderson failed to take steps to implement his responsibilities or to delegate them to others, thereby substantially assisting DVU's books and records failures.

**FIRST CLAIM FOR RELIEF**  
**Violation of Section 206(1) of the Advisers Act**  
**(All Defendants)**

84. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 83 as if fully set forth herein.

85. By engaging in the conduct alleged herein, Defendants were "investment advisers" within the meaning of Advisers Act Section 202(a)(11), 15 U.S.C. § 80b-2(a)(11), because they were persons who, for compensation, engaged in the business of advising others,

either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

86. As set forth above, Defendants made materially false and misleading statements and omissions, including failing to disclose conflicts of interest, to their investment advisory clients. Defendants knew or were reckless in not knowing of the conduct alleged herein.

87. Defendants, directly or indirectly, singularly or in concert, by use of the mails or any means or instrumentality of interstate commerce, while acting as investment advisers, employed devices, schemes, or artifices to defraud a client or prospective client with scienter.

88. As a result, Defendants have violated and, unless enjoined, will continue to violate Advisers Act Section 206(1), 15 U.S.C. § 80b-6(1).

**SECOND CLAIM FOR RELIEF**  
**Violation of Section 206(2) of the Advisers Act**  
**(All Defendants)**

89. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 83, as if fully set forth herein.

90. By engaging in the conduct alleged herein, Defendants were “investment advisers” within the meaning of Advisers Act Section 202(a)(11), 15 U.S.C. § 80b-2(a)(11), because they were persons who, for compensation, engaged in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

91. As set forth above, Defendants made materially false and misleading statements and omissions, including failing to disclose conflicts of interest, to their investment advisory clients. Defendants were at least negligent in engaging in the conduct alleged herein.

92. Defendants, directly or indirectly, singularly or in concert, by use of the mails or any means or instrumentality of interstate commerce, while acting as investment advisers, engaged in transactions, practices, or courses of business which operate as a fraud or deceit upon a client or prospective client, with at least negligence.

93. As a result, Defendants have violated and, unless enjoined, will continue to violate Advisers Act Section 206(2), 15 U.S.C. § 80b-6(2).

**THIRD CLAIM FOR RELIEF**  
**In the Alternative, Aiding and Abetting DVU's Violations of**  
**Sections 206(1) and 206(2) of the Advisers Act**  
**(All Defendants)**

94. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 83, as if fully set forth herein.

95. During the Relevant Period, DVU was an "investment adviser" within the meaning of Advisers Act Section 202(a)(11), 15 U.S.C. § 80b-2(a)(11), because it was a person who, for compensation, engaged in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

96. By engaging in the conduct alleged herein, DVU, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, acting knowingly, recklessly, or negligently: (a) has employed devices, schemes, or artifices to defraud; and/or (b) has engaged in transactions, practices, or courses of business which operate as a fraud or deceit upon a client or prospective client, in violation of Advisers Act Sections 206(1) and 206(2), 15 U.S.C. § 80b-6(1) and (2).

97. By engaging in the conduct alleged herein, Defendants knowingly or recklessly provided substantial assistance to DVU in its violations of Advisers Act Sections 206(1) and 206(2), 15 U.S.C. § 80b-6(1) and (2).

98. As a result, Defendants aided and abetted DVU's violations of Advisers Act Sections 206(1) and 206(2), 15 U.S.C. § 80b-6(1) and (2), and are liable under those sections pursuant to Advisers Act Section 209(f), 15 U.S.C. § 80b-9(f).

**FOURTH CLAIM FOR RELIEF**  
**Aiding and Abetting DVU's Violation of Section 204 of the**  
**Advisers Act and Rule 204-2 Thereunder**  
**(Alderson)**

99. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 83, as if fully set forth herein.

100. During the Relevant Period, DVU was a Commission-registered "investment adviser" by virtue of its Form ADV initial registration statement filed with the Commission that became effective on June 5, 2013, and which has not been withdrawn.

101. By engaging in the conduct described above, DVU while acting as a registered investment adviser who makes use of the mails or of any means or instrumentality of interstate commerce in connection with its business as an investment adviser, failed to make and keep true, accurate, and current books and records relating to its investment advisory business including, but not limited to, a memorandum of each order for the purchase or sale of any security and written communications received and sent relating to any recommendation made or advice given or proposed to be given to DVU's clients.

102. By reason of the foregoing, DVU violated Advisers Act Section 204, 15 U.S.C. § 80b-4, and Rule 204-2 thereunder, 17 C.F.R. § 275.204-2.

103. By engaging in the conduct set forth above, Alderson knowingly or recklessly provided substantial assistance to DVU in its violations of Advisers Act Section 204, 15 U.S.C. § 80b-4, and Rule 204-2 thereunder, 17 C.F.R. § 275.204-2.

104. As a result, Alderson aided and abetted DVU's violations of Advisers Act Section 204, 15 U.S.C. § 80b-4, and Rule 204-2 thereunder, 17 C.F.R. § 275.204-2, and is liable under those sections pursuant to Advisers Act Section 209(f), 15 U.S.C. § 80b-9(f).

**FIFTH CLAIM FOR RELIEF**  
**Aiding and Abetting DVU's Violation of Section 206(4) of the**  
**Advisers Act and Rule 206(4)-7 Thereunder**  
**(Alderson)**

105. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 83, as if fully set forth herein.

106. During the Relevant Period, DVU was a Commission-registered "investment adviser" by virtue of its Form ADV initial registration statement filed with the Commission that became effective on June 5, 2013, and which has not been withdrawn.

107. By engaging in the conduct described above, DVU provided investment advice to its clients without adopting and implementing written policies and procedures reasonably designed to prevent violation, by DVU and DVU's supervised persons, of the Advisers Act and the rules promulgated under the Advisers Act.

108. By reason of the foregoing, DVU violated Advisers Act Section 206(4), 15 U.S.C. § 80b-6(4), and Rule 206(4)-7 thereunder, 17 C.F.R. § 275.206(4)-7.

109. By engaging in the conduct set forth above, Alderson knowingly or recklessly provided substantial assistance to DVU in its violations of Advisers Act Section 206(4), 15 U.S.C. § 80b-6(4), and Rule 206(4)-7 thereunder, 17 C.F.R. § 275.206(4)-7.

110. As a result, Alderson aided and abetted DVU's violations of Advisers Act Section 206(4), 15 U.S.C. § 80b-6(4), and Rule 206(4)-7 thereunder, 17 C.F.R. § 275.206(4)-7, and is liable under those sections pursuant to Advisers Act Section 209(f), 15 U.S.C. § 80b-9(f).

**SIXTH CLAIM FOR RELIEF**  
**Aiding and Abetting DVU's Violation of Section 207**  
**(Alderson)**

111. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 83, as if fully set forth herein.

112. During the Relevant Period, DVU was a Commission-registered "investment adviser" by virtue of its Form ADV initial registration statement filed with the Commission that became effective on June 5, 2013, and which has not been withdrawn.

113. By engaging in the conduct described above, DVU made untrue statements of material fact, and omitted material facts, in its Form ADV.

114. By reason of the foregoing, DVU violated Advisers Act Section 207, 15 U.S.C. § 80b-7.

115. By engaging in the conduct set forth above, Alderson knowingly or recklessly provided substantial assistance to DVU in its violations of Advisers Act Section 207, 15 U.S.C. § 80b-7.

116. As a result, Alderson aided and abetted DVU's violations of Advisers Act Section 207, 15 U.S.C. § 80b-7, and is liable under those sections pursuant to Advisers Act Section 209(f), 15 U.S.C. § 80b-9(f)

**PRAYER FOR RELIEF**

**WHEREFORE**, the Commission respectfully requests that this Court enter a Final Judgment:

**I.**

Finding that Defendants violated the securities laws and rules promulgated thereunder as alleged against them herein.

**II.**

Permanently restraining and enjoining Defendants from violating, directly or indirectly, the securities laws and rules promulgated thereunder they are alleged to have violated.

**III.**

Ordering Defendants to disgorge any ill-gotten gains and to pay prejudgment interest on those amounts.

**IV.**

Ordering Defendants to pay civil monetary penalties pursuant to Advisers Act Section 209(e), 15 U.S.C. § 80b-9(e).

**V.**

Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
June 4, 2018

Respectfully submitted,



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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 4933 / June 4, 2018**

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

**In the Matter of**

**DEVERE USA, 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 to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against deVere USA, Inc. (“DVU” 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 part, 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<sup>1</sup> that

#### **Summary**

1. These proceedings arise out of investment adviser DVU's failure 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. DVU's clients are primarily U.S. residents or citizens who held U.K. defined benefit and defined contribution pensions. DVU provided investment advice to its clients in connection with the transfer of these U.K. pension assets to overseas retirement plans that qualified under the U.K. tax authority's regulations as a Qualifying Recognised Overseas Pension Scheme ("QROPS"). Between at least June 2013 and March 2016, DVU did not disclose arrangements in which third-party product and service providers recommended by DVU in connection with its QROPS advice compensated an overseas affiliate of DVU that, in most cases, in turn compensated the DVU investment adviser representative ("IAR") who had made the recommendations. The undisclosed compensation constituted the primary form of compensation received by DVU's IARs for their advisory services. Each of these arrangements created an economic incentive for DVU to recommend a transfer to a QROPS and/or to recommend certain product and service providers.

2. In addition, DVU IARs made statements concerning the benefits of transferring U.K. pension assets to a QROPS, including with respect to U.S. and U.K. tax treatment and the investment options that a DVU client would have in a QROPS, that were materially misleading or incomplete. In addition, DVU failed to satisfy disclosure requirements with respect to its Form ADV filings. DVU also 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.

#### **Respondent**

3. DVU has been registered with the Commission as an investment adviser (File No. 801-78041) since June 5, 2013. DVU is incorporated in the State of Florida and its principal place of business is located in New York, New York. DVU's most recent Annual Updating Amendment to Form ADV, filed on March 31, 2018, reported approximately \$500 million in assets under management.

#### **Background**

4. DVU's clients primarily are U.S. residents or citizens who held U.K.

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<sup>1</sup> The findings herein are made pursuant to Respondent DVU's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

defined benefit or defined contribution pensions from past employment in the U.K. Defined benefit pensions are generally “guaranteed” benefits that pay a defined amount from retirement age until death, with specified annual inflation adjustments, and with continued payment to a surviving spouse typically equal to 50% of the amount until that spouse’s death. Defined contribution pensions are generally akin to U.S. 401(k) plans in which an employee can choose from a defined set of investment options, take periodic or other withdrawals upon retirement age, and select a beneficiary who would acquire the remaining assets upon death. Individuals who hold U.K. defined benefit or defined contribution pensions generally may obtain a cash equivalent transfer value for transfer to another retirement plan.

5. Until in or around March 2017, DVU’s primary business involved recommending that its clients elect to take a cash equivalent transfer value from their U.K. defined benefit or defined contribution pensions and transfer to a QROPS for which DVU would provide ongoing investment advice on a non-discretionary basis. DVU recommended that clients use certain Malta-based QROPS trustees (the “Trustee Firms”) and certain products or services offered by third-party firms located outside the U.S. that provided custodial accounts for the QROPS in which investments would be made in securities (the “Custodian Firms”). DVU also provided ongoing investment advice to clients on the underlying securities held in the QROPS. In some instances, DVU also advised clients regarding currency conversions.

6. At times, DVU represented itself as “fee-only” in e-mail and other communications to current and prospective clients.

### **DVU Failed to Disclose Compensation Arrangements and Conflicts of Interest**

#### ***Compensation from the Custodian Firms and the Trustee Firms***

7. The Custodian Firms that DVU recommended to prospective clients had charging structures in which clients would be charged a fixed annual fee each year, certain fixed charges for each transaction in the account, and what was referred to as an “establishment fee.” The “establishment fee” for DVU clients ranged from approximately 1.0-1.1% of the pension transfer value per year for 10 years, with early cancellation penalties that guaranteed the Custodian Firms’ receipt of the full 10-11% of the transfer value—either over a 10 year period through the annual charge or in accelerated early cancellation penalties.

8. Upon a DVU client’s transfer to a QROPS, the Custodian Firms paid an amount equivalent to 7% of the transfer value to an overseas affiliate of DVU that in turn paid approximately half of that amount to the DVU IAR who recommended the pension transfer. This payment constituted the primary form of compensation received by DVU’s IARs. The Custodian Firms paid this amount out of their own assets, but their future collection of the “establishment fee” over 10 years (or fewer) of approximately 10-11% of the transfer value was the basis for such payment. DVU clients were aware of the Custodian Firms’ charges, including the “establishment fee.” However, despite knowing of the 7% upfront compensation arrangement and the fact that half of such compensation was paid to its IARs, DVU did not

disclose the arrangement or payments, or the material conflict of interest that they created, to its clients or prospective clients.

9. The Custodian Firms also had arrangements with an overseas affiliate of DVU under which bonus payments would be made if certain annual business targets were met, inclusive of DVU's QROPS business. DVU clients were aware of the fees that they paid to the Custodian Firms, but the bonus payment arrangements were not disclosed to DVU's clients and prospective clients.

10. The Trustee Firms that DVU recommended charged a fixed initial fee and a fixed annual fee to DVU clients. The Trustee Firms had compensation arrangements under which they agreed to pay certain "introduction" and annual fees to an overseas affiliate of DVU, including with respect to DVU clients who established and maintained a QROPS with the Trustee Firms. DVU clients were aware of the fees that they paid to the Trustee Firms, but the compensation arrangements were not disclosed to DVU's clients and prospective clients.

#### ***Compensation from Funds and Structured Note Investments***

11. From early 2013 through at least the fall of 2014, DVU recommended that QROPS clients invest primarily in certain European multi-asset funds and certain structured notes that charged an entry fee of up to 4 or 5%. DVU waived this fee for some clients and not for others. When DVU did not waive the fee, it was paid to an overseas affiliate that in turn paid approximately half of the amount to the DVU IAR who recommended the investment. While schedules and dealing instructions disclosed to clients that the client would pay the entry fee specified, DVU knew but did not disclose that its IARs had an economic interest in such compensation and that it constituted a conflict of interest.

#### ***Compensation from Foreign Exchange Provider***

12. DVU recommended that certain clients convert all or a portion of their U.K. pension cash equivalent transfer value, which was in British Pounds, to U.S. Dollars or Euros when transferring it to a QROPS. The foreign exchange provider used to make such a conversion, which was an overseas affiliate of DVU, generally charged a fee equal to 1% of the amount of currency exchanged. The provider had an arrangement to pay a portion of its fee to the DVU IAR making the recommendation. Despite knowing this, DVU did not disclose to its clients the fee or the compensation paid to its IARs until at least March 31, 2017.

#### ***Form ADV filings***

13. DVU made material misstatements and omissions relating to these compensation arrangements and the related conflicts of interest in Form ADVs filed with the Commission and delivered to clients. As an SEC-registered investment adviser, DVU was required to deliver to clients a Form ADV Part 2A Brochure for the firm and a Form ADV Part 2B Brochure Supplement for each IAR who provided advisory services to that client.

14. During the relevant period, Item 5 of the Part 2A Brochure required disclosure of how the investment adviser was compensated for its advisory services, including, whether the adviser or any of its supervised persons “accepts compensation for the sale of securities or other investment products” and an explanation that this practice constitutes a conflict of interest. Similarly, Item 5 of the Part 2B Brochure Supplement for each IAR required, “[i]f someone who is not a client provides an economic benefit to the [IAR] for providing advisory services” for the adviser to “generally describe the arrangement.”

15. Until at least March 30, 2016, DVU did not make these required disclosures with respect to the compensation arrangements described above. Prior to July 20, 2015, DVU’s Part 2A firm Brochure Item 5 disclosure described DVU’s compensation as “an annual fee based upon a percentage of the market value of the assets being managed by DVU,” stated that such fee “is exclusive of, and in addition to brokerage commissions, transaction fees, and other related costs and expenses which are incurred by the client,” and represented that DVU “does not [] receive any portion of these commissions, fees, and costs.” Similarly, the Part 2B Brochure Supplements with respect to DVU’s IARs misrepresented that the IARs received no economic benefit from someone other than a client for providing investment advisory services.

16. On March 23, 2015, SEC exam staff issued a deficiency letter to DVU. One of the findings in the letter was that DVU had failed to disclose the 7% paid by the Custodian Firms. DVU failed to adequately disclose the 7% payments in its 2A Brochure until March 30, 2016.

### **DVU Made Misrepresentations and Omissions Concerning QROPS Benefits**

#### ***Statements Concerning U.S. and U.K. Tax Treatment***

17. DVU IARs made a variety of definitive statements to prospective clients concerning purported tax benefits of a QROPS transfer that were materially misleading. For example, while citing such purported QROPS benefits, certain DVU IARs often omitted material information known to them about a possible risk that a transfer by a U.S. resident or citizen from a U.K. pension to a Malta-based QROPS would be treated by the U.S. Internal Revenue Service as a distribution subject to U.S. income taxes.

18. DVU IARs also made other statements to prospective clients about the U.S. and U.K. tax treatment if they remained in their U.K. pensions that in some cases were simply inaccurate and in other instances omitted material information. For example, certain DVU IARs told some prospective clients from at least 2014 through 2016 that U.K. pensions were subject to U.K. inheritance tax, which had not applied since at least 2011. Certain DVU IARs also told some prospective clients that any income paid to them from their U.K. pension would be taxed by both the U.S. and the U.K., while omitting the fact that U.S. residents could provide the U.K. pension provider with a U.K. tax form so that U.K. income taxes would not be withheld (on the basis that they were already paying U.S. income taxes on the distribution).

### ***Statements Concerning Investment Options***

19. DVU, through its IARs, told prospective clients that a QROPS provided “open architecture” investment flexibility in which clients would be able to choose from over 15,000 securities. However, the Trustee Firms placed limits on a client’s investment choices, including by prohibiting self-direction. Moreover, DVU only recommended investments from a more limited internal set of approved investments that, at most, contained fewer than 100 investment options. DVU’s IARs did not disclose the limitations known to them arising from both the internal set of approved investments and the restrictions imposed by the Trustee Firms when describing the investment flexibility benefits of a QROPS to prospective clients.

### **DVU’s Compliance Failures**

20. DVU’s policies and procedures were not reasonably designed because they were not tailored to DVU’s actual business. In particular, prior to at least December 2015, DVU did not have policies and procedures to address its QROPS business and the conflicts of interest posed by the receipt of compensation from third parties in connection with its QROPS-related recommendations. In addition, DVU did not follow or implement many of its existing policies and procedures. In fall 2015, DVU hired an outside compliance consultant to conduct a review of DVU’s compliance policies and procedures.

### **Violations**

21. As a result of the conduct described above, DVU willfully violated Sections 206(1), 206(2), 207 and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

22. Sections 206(1) and 206(2) of the Advisers Act prohibit fraudulent conduct by an investment adviser.

23. 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 Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein.”

24. Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder require, among other things, that a registered investment adviser adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules promulgated thereunder by the adviser and its supervised persons.

### **Undertakings**

25. Respondent DVU has undertaken to:

a. Notice to Clients. Within thirty (30) days of the entry of this Order, Respondent shall send a letter, in a form not unacceptable to the Commission staff, to all existing DVU clients notifying them of the entry of this Order, and containing a summary of this Order, via mail, e-mail, or such other method as may be acceptable to the Commission staff. If sent electronically, the letter shall contain a hyperlink to the Order. If sent by mail, the letter shall contain a URL where the Order can be viewed and provide the client the opportunity to request a copy of the Order. Within fourteen (14) days of such a request, Respondent shall deliver a copy of the Order to the client. DVU will also comply with all disclosure obligations under the Advisers Act concerning this Order, including providing a notification of this Order in the Item 2 “Material Changes Since Last Annual Update” section of any brochure required under Rule 204-3 including in response to Item 9.

b. Training. Respondent shall provide a minimum of four (4) hours training for each calendar year from 2018 through 2020, to all DVU employees concerning the fiduciary duties of an investment adviser and the disclosure of conflicts of interest, including economic conflicts of interest.

c. Retention of Independent Compliance Consultant. Within forty-five (45) days after the date of this Order, Respondent shall engage an independent consultant not unacceptable to the Commission staff (the “Independent Consultant”), and provide a copy of this Order to the Independent Consultant. No later than ten (10) days following the date of the Independent Consultant’s engagement, Respondent shall provide the Commission staff with a copy of the engagement letter detailing the Independent Consultant’s responsibilities, which shall include the reviews and reports to be made by the Independent Consultant as set forth in this Order. The Independent Consultant’s compensation and expenses shall be borne exclusively by Respondent.

d. Independent Consultant’s Reviews. Respondent shall require the Independent Consultant to:

(1) conduct a comprehensive review of DVU’s current policies, procedures, and systems with respect to its investment advice, disclosures, internal controls and compliance with the Advisers Act;

(2) submit a written and dated report to DVU and the Commission Staff of its findings and recommendations for changes or improvements to the policies, procedures and systems, and a procedure for implementing the recommended changes and improvements;

(3) conduct an annual review, for each of the following two years from the date of the issuance of the Independent Consultant’s initial report, to assess whether DVU is complying with its then-current policies, procedures and systems and whether the then-current policies, procedures and systems are effective in achieving their stated purposes, and review DVU’s provision of training pursuant to paragraph 25(b) above; and

(4) submit a written and dated report to DVU and the Commission Staff of its findings and recommendations, if any, for additional changes or improvements to the policies, procedures and systems, and a procedure for implementing the recommended changes and improvements.

e. Independent Consultant's Reports. Respondent shall require the Independent Consultant to complete its review and issue its initial report within ninety (90) days after the date of the engagement. For the annual reviews conducted for each of the following two years, Respondent shall require the Independent Consultant to issue each of these reports within one-year of the date of the preceding report.

f. Respondent shall, within forty-five (45) days of receipt of each of the Independent Consultant's reports, adopt all recommendations contained in the reports, provided, however, that within thirty (30) days after the date of the applicable report, Respondent shall in writing advise the Independent Consultant and the Commission staff of any recommendations that it considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Respondent considers to be unduly burdensome, impractical, or inappropriate, Respondent need not adopt that recommendation at that time but shall instead propose in writing an alternative policy or procedure designed to achieve the same objective or purpose as that recommended by the Independent Consultant. Respondent shall engage in good faith negotiations with the Independent Consultant in an effort to reach agreement on any recommendations objected to by Respondent. In the event that Respondent and the Independent Consultant are unable to agree on an alternative proposal within thirty (30) days, Respondent shall abide by the determinations of the Independent Consultant.

g. Within thirty (30) days of Respondent's adoption and implementation of all of the recommendations in the Independent Consultant's reports that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, Respondent shall certify in writing to the Independent Consultant and the Commission staff that Respondent has adopted and implemented all recommendations in the applicable report. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence.

h. Respondent shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of its files, books, records and personnel as reasonably requested for the Independent Consultant's review, including access by on-site inspection.

i. To ensure the independence of the Independent Consultant, Respondent (1) shall not have the authority to terminate the Independent Consultant or substitute another independent consultant for the initial Independent Consultant without prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.



j. Respondent shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with DVU, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement shall also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with DVU, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

k. Respondent shall not be in, and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or any other doctrine of privilege to prevent the Independent Consultant from transmitting any information, reports, or documents to the Commission staff.

l. DVU shall certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance no later than sixty (60) days from the completion of the undertaking(s). The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. All reports and certifications described in these undertakings shall be submitted to Wendy B. Tepperman, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281, with a copy to the Office of Chief Counsel of the Enforcement Division.

m. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

#### **IV.**

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

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

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

- B. Respondent DVU is censured.
- C. Respondent shall comply with the undertakings enumerated in paragraph 25 above.
- D. Respondent DVU shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$8,000,000.00 to the Securities and Exchange Commission. 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

Payments by check or money order must be accompanied by a cover letter identifying DVU 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 Lara S. Mehraban, Associate Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties referenced in paragraph IV(D) above. 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.

By the Commission.

Brent J. Fields  
Secretary