

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101071 / September 18, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6708 / September 18, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22142

In the Matter of

First Horizon Advisors, Inc.

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTION 203(e) 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 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”) against First Horizon Advisors, Inc. (“First Horizon” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 203(e) 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 finds¹ that:

Summary

1. This proceeding arises out of First Horizon's failure to comply with Regulation Best Interest ("Reg BI"), specifically Reg BI's Compliance Obligation, which requires broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI. Exchange Act Rule 15c-1(a)(2)(iv). Between July 1, 2020, and at least July 31, 2023 ("Relevant Period"), First Horizon did not maintain and enforce its Reg BI-related policies and procedures for structured notes that First Horizon's registered representatives recommended to retail customers.

2. Relevant to this proceeding, First Horizon's Reg BI policies and procedures applicable to structured note recommendations required its registered representatives to determine whether the customer's investment profile met First Horizon's requirements; to determine whether the resulting customer holdings would not exceed First Horizon's concentration limit for that product type in the brokerage account; to submit to First Horizon customer-signed structured note disclosures; and to submit to First Horizon customer-signed letters when the customer liquidated holdings in certain products and used those funds to purchase a structured note.

3. During the Relevant Period, First Horizon's Reg BI policies and procedures required its Principal Review Desk ("PRD") to review structured note recommendations to help ensure that the transactions complied with First Horizon's Reg BI policies and procedures. From July 1, 2020 until February 2023, PRD reviewed transactions after execution. If a transaction did not comply, then PRD was required to create an exception report within a specified time limit based on the type of exception. Registered representatives were then given 60 days after the creation of exception reports to provide the information or documents necessary to bring the transaction into compliance. Given PRD's exception creation schedule and the 60-day grace period to clear exceptions, many exceptions for structured note recommendations were created and cleared after the transactions were executed. In February 2023, First Horizon's Reg BI policies and procedures changed to require that PRD review and approve structured note recommendations before the transactions were executed.

4. First Horizon Corporation merged with IberiaBank Corporation in July 2020. Beginning in January 2021, Iberia Financial Services LLC ("merging broker-dealer")

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

terminated its preexisting networking arrangement and First Horizon integrated their operations. As a result, the customer accounts of the merging broker-dealer were migrated to First Horizon. Registered representatives from the merging broker-dealer became First Horizon's registered representatives ("new First Horizon registered representatives") following the integration.

5. First Horizon was aware several months prior to the integration that certain customer investment profile information would not map properly from the merging broker-dealer's clearing firm to First Horizon's clearing firm because of differing profile fields and that certain other information would not transfer at all. For over a year following First Horizon's operations integration with the merging broker-dealer, First Horizon failed to maintain or enforce its Reg BI policies and procedures for the acquired customer accounts and the new First Horizon registered representatives that serviced those accounts. First Horizon's systems did not have accurate customer investment profile and customer holdings information for the acquired accounts, and this information was necessary for PRD to determine whether new structured note recommendations complied with First Horizon's Reg BI policies and procedures. Additionally, new First Horizon registered representatives did not have access to First Horizon's exception reporting site to review and clear exceptions related to their structured note recommendations to the retail customers whose accounts First Horizon had acquired in the merger.

6. In addition, for at least three years after the implementation of Reg BI in July 2020, First Horizon also did not maintain or enforce certain Reg BI policies and procedures applicable to structured note recommendations made by its new First Horizon and legacy First Horizon registered representatives (broadly "registered representatives"). For at least several hundred structured note recommendations, PRD failed to comply with its Reg BI policies and procedures in effect at the time. For example, First Horizon failed to create exception reports, or First Horizon's registered representatives failed to clear exceptions, within the times specified in First Horizon's policies and procedures. Additionally, after First Horizon's Reg BI policies and procedures were revised to require PRD to review structured note recommendations for compliance prior to purchase, First Horizon approved structured note recommendations for which a "switch letter" was not on file prior to execution.

7. As a result of these failures, First Horizon failed to maintain and enforce written policies and procedures reasonably designed to achieve compliance with the Compliance Obligation and willfully violated the General Obligation of Reg BI, found in Rule 15l-1(a)(1) of the Exchange Act ("General Obligation").

Respondent

8. **First Horizon Advisors, Inc.** is a Tennessee corporation with its principal place of business in Memphis, Tennessee. First Horizon has been registered with the Commission as a broker-dealer since 1985, and as an investment adviser since 2013. First Horizon is a wholly owned subsidiary of First Horizon Bank, and First Horizon Bank is a

wholly owned subsidiary of First Horizon Corporation.

Facts

First Horizon's Reg BI Policies and Procedures

9. During the Relevant Period, First Horizon's Reg BI policies and procedures required its registered representatives to take certain actions, including when recommending structured notes to retail customers. For example, registered representatives had to determine that the customer's investment profile met First Horizon's requirements for structured notes and that the resulting holdings would not exceed First Horizon's concentration limit for structured notes in the customer's account. The registered representatives also were required to upload to First Horizon's systems a customer-signed Structured Products Disclosure and Customer Acknowledgement Form that indicated the customer, among other things, received the product prospectus that included the product fees; understood that First Horizon received compensation for selling structured notes; and understood that structured notes are buy-and-hold investments involving principal risk. If the customer was using the proceeds from selling a structured note (or certain other products) before the product matured to purchase another structured note, then the registered representatives also had to upload a customer-signed investment letter or "switch letter" that included disclosures about the sale and purchase fees and information about why the structured note recommendation was "appropriate" for the customer.

10. During the Relevant Period, First Horizon's Reg BI policies and procedures required PRD to review structured product recommendations to determine whether they complied with its Reg BI policies and procedures. Accordingly, PRD relied on the information in its systems to determine whether the customer's investment profile met First Horizon's requirements for structured notes, whether the resulting holdings would exceed First Horizon's concentration limit for structured notes in the customer's account, whether the completed Structured Products Disclosure and Customer Acknowledgement Form was uploaded, and, if applicable, whether the completed "switch letter" was uploaded. If any of these requirements were not met, the Reg BI policies and procedures set forth what PRD was required to do next.

11. Until February 2023, First Horizon's policies and procedures required PRD to create exception reports for trades that were flagged as non-compliant. Registered representatives had 60 days after the exception report was created to clear the exception by submitting the necessary investment profile or customer holdings information or documents to make the recommendation comply with First Horizon's Reg BI policies and procedures. Beginning in February 2023, First Horizon implemented a preapproval requirement for structured notes, requiring that any recommendation comply with First Horizon's Reg BI policies and procedures before the transaction was executed. The preapproval requirement meant that PRD had to review and approve or reject structured note recommendations prior to execution. First Horizon later implemented an automated tool to review the recommendations. Following this implementation, PRD reviewed any recommendations that the automated tool had flagged as not compliant with

First Horizon's Reg BI policies and procedures.

**First Horizon Failed to Resolve Known Compliance System
Deficiencies Related to the Merger**

12. In October 2020, several months prior to First Horizon's integration with the merging broker-dealer, First Horizon learned that certain customer investment profile information, such as risk tolerance and investment time horizon, would not map from the merging broker-dealer's systems to the comparable fields in First Horizon's systems, and that other information—such as investible assets—would not transfer at all. PRD relied on this customer investment profile information to determine whether new structured note recommendations for those accounts complied with First Horizon's Reg BI policies and procedures. Although PRD notified the new First Horizon Representatives that they were required to complete a Customer Profile Update form for new recommendations made after the integration, in some cases, the new First Horizon Representatives failed to complete the Customer Profile Update as required. First Horizon moved forward with the integration in January 2021, migrating 5,442 customer brokerage accounts without taking adequate steps to help ensure that its systems had the necessary customer investment profile information for PRD to maintain and enforce First Horizon's Reg BI policies and procedures.

13. In February 2021, First Horizon learned that technology issues prevented the new First Horizon registered representatives from accessing First Horizon's exception reporting site to review exception reports related to their recommendations and to provide new information or documentation needed to comply with First Horizon's Reg BI policies and procedures. First Horizon determined that the new First Horizon registered representatives would not be able to access the exception reporting site until the operations integration was complete, which was not expected to occur for at least several months. Throughout this process, the new First Horizon registered representatives worked with First Horizon staff to clear exceptions and mitigate the technology issues. Nonetheless, First Horizon continued with the operations integration without taking adequate steps to help ensure that the new First Horizon registered representatives cleared the exception reports within the required 60 days. The new First Horizon registered representatives were not able to access the exception reporting site until April 2022—over a year after the discovery of the issue—and were permitted an additional three months, until July 2022, by First Horizon to clear their backlogged exceptions.

14. For the foregoing reasons, between January 2021 and April 2022, First Horizon did not maintain and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI for the new First Horizon registered representatives' recommendations of structured notes.

First Horizon Failed to Maintain and Enforce Certain Reg BI Policies and Procedures Concerning Structured Note Recommendations

15. Until February 2023, PRD was required to create exception reports when structured note recommendations did not comply with First Horizon’s Reg BI policies and procedures because the customer investment profile information did not meet First Horizon’s structured note requirements, the resulting holdings would not comply with First Horizon’s concentration limits for structured products in the customer’s account, a completed Structured Note Disclosure and Customer Acknowledgement Form was not uploaded, or, where applicable, a completed “switch letter” was not uploaded. PRD was required to create the exception reports within specified times depending on the type of exception. First Horizon’s registered representatives were required to clear structured note exceptions within 60 days after the exception reports were created.

16. First Horizon generated at least 2,500 exceptions on structured note recommendations. PRD did not timely create exception reports, and registered representatives did not timely clear exceptions, for at least several hundred of these structured note recommendations.

17. Beginning in February 2023, when First Horizon’s written Reg BI policies and procedures required that structured note recommendations be reviewed and approved for compliance prior to execution, PRD approved structured note recommendations for which a “switch letter” was not on file prior to execution.

18. As a result of the conduct described above, First Horizon failed to satisfy the General Obligation under Reg BI and willfully² violated Rule 15l-1(a)(1) of the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest

² “Willfully,” for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 203(e) of the Advisers 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).

to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Exchange Act Rule 15l-1(a)(1).

B. Respondent is censured.

C. Respondent shall, within 21 days of the entry of this Order, pay a civil money penalty in the amount of \$325,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). 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 First Horizon 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 Osman Nawaz, Chief, Complex Financial Instruments Unit, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction

of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary