

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 72694 / July 28, 2014

INVESTMENT ADVISERS ACT OF 1940
Release No. 3881 / July 28, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15987

In the Matter of

Dominick & Dominick LLC
and Robert X. Reilly,

Respondents.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTIONS 203(e) AND 203(k) OF
THE INVESTMENT ADVISERS ACT OF
1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND
CEASE-AND-DESIST ORDERS

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 Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), against Dominick & Dominick LLC (“D&D,” or the “Company”) and that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Advisers Act against Robert X. Reilly (“Reilly,” collectively with D&D, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have each submitted an Offer of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent 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 Sections 203(e) and 203(k) of the Investment Advisers Act of

1940, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds¹ that:

Summary

This matter concerns breaches of fiduciary duty to certain advisory clients by D&D, a dually registered investment adviser and broker-dealer, in violation of the Advisers Act. First, for those clients who participated in D&D’s “Commission-Only” and “Fee Plus Commission” advisory programs, D&D did not seek best execution in that D&D’s best execution analyses did not account for brokerage commissions. Further, D&D’s best execution analyses did not analyze the commissions being charged to these advisory clients after it negotiated a reduction in execution and clearing costs with its clearing firm in 2010. Second, D&D failed to disclose a conflict of interest involving its clearing firm—that it received rebates consisting of a significant portion of the interest these advisory clients paid the clearing firm for margin loans.

Additionally, D&D violated the Advisers Act by (1) not adopting and implementing written best execution policies and procedures reasonably designed to prevent violation of the Advisers Act, (2) engaging in transactions with advisory clients on a principal basis without obtaining client consent before completing the transactions, and (3) making inaccurate statements in its Form ADV concerning best execution and principal transactions, and omitting disclosure of rebates received on margin loan interest.

Reilly was responsible for conducting D&D’s best execution analyses for advisory clients and adopting and implementing its written best execution policies and procedures for advisory clients. Reilly, therefore, caused D&D’s best execution and policy and procedures violations.

Respondents

1. D&D is, and at all times relevant herein, has been, a dually registered investment adviser and broker-dealer with a principal place of business in New York, New York. During the relevant time period, D&D had approximately 30 advisory personnel who had clients in one or more of D&D’s five types of advisory programs. D&D also provides brokerage services to nearly all of its advisory clients.

2. Reilly, 45, is, and at all times relevant herein, has been, the Chief Operating Officer and a registered investment advisory representative of D&D. Reilly is a resident of Connecticut.

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

Background

Best Execution Violations

3. From March 2008 through December 2012, D&D performed monthly best execution analyses for selected trades in advisory client accounts that compared the price obtained by its clearing broker to the Bloomberg price for that security at the same date and time. By only looking at execution price, these analyses did not consider the commissions that certain of D&D's advisory clients paid. In addition, during this period, D&D examined the brokerage commissions advisory clients were charged only twice, once in 2008, and again following a 2012 SEC exam. Both times, D&D's analysis only compared a D&D schedule of brokerage commissions with other advisers' brokerage commission schedules. These analyses therefore also did not examine the actual commissions charged to certain of D&D's advisory clients.

4. Additionally, D&D did not conduct any best execution analysis in August 2010 when it negotiated an amendment to its clearing agreement with its clearing broker. The agreement reduced the clearance and execution costs charged by D&D's clearing broker, and increased D&D's share of the commissions charged to all of its customers (including certain of its advisory clients) without altering the allocation of responsibilities between D&D as an introducing broker and its clearing broker. The amended clearing agreement reduced the clearance and execution costs paid by D&D for equity, options and fixed income transactions. Notwithstanding this reduction in executing and clearing costs, D&D did not consider whether certain of its advisory clients continued to receive best execution.

5. Reilly was responsible for conducting D&D's best execution analyses for advisory clients.

Disclosure Violations

6. From January 2008 to September 2012, D&D did not disclose a conflict involving its clearing firm—that D&D received a rebate from its clearing firm of a certain portion of the interest that certain advisory clients paid the clearing firm for margin loans. Specifically, under D&D's agreement with its clearing firm, the clearing firm rebated to D&D a percentage of the difference between the average customer margin rate and the federal funds rate. D&D did not disclose in its Form ADV during this period that it received such interest rebates from its clearing firm.²

7. Additionally, from January 2008 through September 2012, Part II of D&D's Form ADV contained misleading statements of material fact. First, D&D stated in its Form ADV that “[w]e have negotiated commission rates with D&D for our clients which we believe to be competitive with rates available elsewhere for similar services.” This statement suggests that D&D's commission rates resulted from arms-length negotiation between D&D in its investment adviser capacity and D&D in its broker capacity when they did not.

² D&D's Form ADV Part 2A was revised in September 2012 to reflect that disclosure following an SEC examination. Prior to amendments of Form ADV in 2010, Part 2 was designated as 'Part II.' See Rel. IA-3060 (July 28, 2010) at n.6.

8. D&D also stated in its Form ADV that it “will not act as principal in any transaction for your accounts or act as agent on both sides of any transaction, unless you have granted us permission to do so prior to the completion of the transaction.” This statement indicates that D&D would seek client consent before settling principal transactions with advisory clients when it did not do so.

Failure to Adopt and Implement Sufficient Written Policies and Procedures

9. From January 2008 through December 2012, D&D did not adopt and implement written best execution policies and procedures reasonably designed to ensure compliance with the Advisers Act. D&D’s written advisory best execution policies and procedures made little mention of any actual policies or procedures. They referred only to fixed income transactions and made no mention of any other securities transactions. Moreover, D&D’s policies and procedures did not consider commissions charged to advisory clients as part of its overall best execution analysis.

10. Reilly was responsible for adopting and implementing D&D’s best execution policies and procedures for advisory clients.

Violative Principal Transactions

11. From January 2008 through August 2012, D&D engaged in approximately 140 principal transactions with advisory clients without obtaining consent prior to completing such transactions. D&D’s practice was to send a letter to the advisory client after a transaction was executed but before settlement, providing details of the transaction and stating that it had engaged in the transaction as a principal. The letter did not seek the client’s consent to proceed with or settle the transaction, and D&D did not otherwise obtain the client’s consent. It simply gave notice of the transaction and required no further action from the client.

Violations

12. As a result of the conduct described above, D&D willfully violated Section 206(2) of the Advisers Act, which makes it unlawful for an adviser to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client.³

13. As a result of the conduct described above, D&D willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which makes it unlawful to provide investment advice without adopting and implementing written policies and procedures reasonably designed to prevent violations of the Advisers Act.

14. As a result of the conduct described above, Reilly caused D&D’s violations of Sections 206(2) and 206(4) of the Advisers Act, and Rule 206(4)-7 promulgated thereunder.

³ A willful violation of the securities laws means merely “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.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

15. As a result of the conduct described above, D&D willfully violated Section 206(3) of the Advisers Act, which makes it unlawful for an adviser to engage in principal transactions with a client without seeking consent before completion of the transaction.

16. As a result of the conduct described above, D&D willfully violated Section 207 of the Advisers Act which 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.”

Undertakings

Respondent D&D has undertaken to:

17. Engage for one year a qualified consultant (“Consultant”) not unacceptable to the staff to assist D&D in developing and implementing policies and procedures reasonably designed to promote D&D’s compliance with the Advisers Act, including best execution and related disclosure obligations for advisory clients, and its obligations under Section 206(3) regarding principal transactions.

18. 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. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Nichola Timmons, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5631 with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

Respondents’ Remedial Efforts

19. In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by D&D and cooperation afforded the Commission staff. Specifically, D&D revised its best execution policies and procedures to include consideration of the total cost of effecting advisory client transactions. Further, D&D retained a consultant to assist it in developing and implementing policies and procedures reasonably designed to promote D&D’s compliance with the Advisers Act, including its best execution and related disclosure obligations for advisory clients.

IV.

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

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Sections 203(e)

and 203(k) of the Advisers Act it is hereby ORDERED that:

A. D&D cease and desist from committing or causing any violations and any future violations of Sections 206(2), 206(3), 206(4), and 207 of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

B. Reilly cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

C. D&D is censured.

D. D&D shall pay disgorgement and prejudgment interest as follows:

- (1) Respondent shall, within 10 days of the entry of this Order, pay disgorgement of \$136,523.00 and prejudgment interest of \$11,083.60 consistent with the provisions of this Subsection D. Within ten (10) days of the entry of the Order, D&D shall deposit the full amount of the disgorgement and prejudgment interest thereon (the "Disgorgement Fund") into an account acceptable to the Commission staff and D&D shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely deposit of the Disgorgement Fund is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:
 - a. Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
 - b. 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
 - c. 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
6500th MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying D&D 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 Nichola Timmons, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5631.

- (2) D&D shall be responsible for administering the Disgorgement Fund. D&D shall pay applicable portions of the Disgorgement Fund to affected current and former advisory clients pursuant to a disbursement calculation (the “Calculation”) that has been submitted to, reviewed and approved by the Commission staff in accordance with this Subsection D. If the total amount otherwise payable to a client is less than \$25.00, D&D shall instead pay such amount to the Commission for transmittal to the United States Treasury as provided in this Subsection D.
- (3) D&D shall, within one hundred twenty (120) days from the entry of the Order, submit a proposed Calculation to the Commission staff for its review and approval that identifies, at a minimum: (i) the name and account number of each affected advisory client; (ii) the exact amount of the payment to be made to such client; and (iii) a description of the client transactions (“Relevant Transactions”) to which the client’s payment relates. D&D also shall provide to the Commission staff such additional information and supporting documentation relating to the Relevant Transactions as the Commission staff may request for the purpose of its review. No portion of the Disgorgement Fund shall be paid to any client account directly or indirectly in the name of or for the benefit of D&D. In the event of one or more objections by the Commission staff to D&D’s proposed Calculation and/or any of its information or supporting documentation, D&D shall submit a revised Calculation for the review and approval of the Commission staff and/or additional information or supporting documentation within ten (10) days of the date that D&D is notified of the objection, which revised Calculation shall be subject to all of the provisions of this Subsection D.
- (4) D&D shall complete the transmission of all amounts otherwise payable to affected advisory clients pursuant to a Calculation approved by the Commission staff within one hundred fifty (150) days of the entry of the Order, unless such time period is extended as provided in paragraph (9) of this Subsection D.
- (5) If D&D does not distribute or return any portion of the Disgorgement Fund for any reason, including an inability to locate an affected advisory client or any factors beyond D&D’s control, or if D&D has not transferred any portion of the Disgorgement Fund to a client because that client is due less than \$25.00, D&D shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury after the final accounting provided for in this Subsection D is approved by the Commission. D&D may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account or by credit or debit card via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Respondent may also pay by certified check, bank cashier’s check, or United States postal money order

payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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Oklahoma City, OK 73169

and submitted under cover letter that identifies D&D as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Nichola Timmons, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5631.

- (6) D&D shall be responsible for any and all tax compliance responsibilities associated with the Disgorgement Fund and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by D&D and shall not be paid out of the Disgorgement Fund.
- (7) Within two hundred and ten (210) days after the date of entry of the Order, D&D shall submit to the Commission staff for its approval a final accounting and certification of the disposition of the Disgorgement Fund, which final accounting and certification shall be in a format to be provided by the Commission staff. The final accounting and certification shall include, but not be limited to: (i) the amount paid to each payee; (ii) the date of each payment; (iii) the check number or other identifier of money transferred; (iv) the date and amount of any returned payment; (v) a description of any effort to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; and (vi) any amounts to be forwarded to the Commission for transfer to the United States Treasury. D&D shall submit proof and supporting documentation of such payment (whether in the form of fee credits, cancelled checks, or otherwise) in a form acceptable to the Commission staff and under a cover letter that identifies D&D as a Respondent in these proceedings and the file number of these proceedings to Nichola Timmons, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5631. D&D shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.
- (8) After D&D has submitted the final accounting to the Commission staff, the staff shall submit the final accounting to the Commission for approval and shall request Commission approval to send any remaining amount to the United States Treasury.

- (9) The Commission staff may extend any of the procedural dates set forth in this Subsection D for good cause shown. Deadlines for dates relating to the Disgorgement Fund 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.

E. D&D shall, within 10 days of the entry of the Order, pay a civil monetary penalty of \$75,000 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:

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Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying D&D 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 Nichola Timmons, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

F. Reilly shall, within 10 days of the entry of the Order, pay a civil monetary penalty of \$10,000. 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:

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Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying D&D 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 Nichola Timmons, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

G. Respondent D&D shall comply with the undertakings enumerated in Paragraphs 17-18 above.

By the Commission.

Jill M. Peterson
Assistant Secretary