

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6573 / March 18, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-21894

In the Matter of

DELPHIA (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 Delphia (USA) Inc. (“Delphia” 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 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 finds¹ that:

Summary

1. These proceedings concern false and misleading statements made by Delphia, a former registered investment adviser, in its regulatory filings, advertisements, and social media relating to its purported use of artificial intelligence and machine learning. From at least August 2019 to August 2023, Delphia represented that it used artificial intelligence and machine learning to analyze its retail clients' spending and social media data to inform its investment advice when, in fact, no such data was being used in its investment process. After an examination by the Commission's Division of Examinations, Delphia agreed to correct the false and misleading statements in 2021 and to take steps to ensure that no such statements were made in the future. While certain corrective efforts were made, additional false and misleading statements concerning the use of its retail clients' data in the investment process continued to be made through August 2023. In addition, Delphia failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules adopted thereunder. As a result of this conduct, Delphia willfully violated Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-1 and 206(4)-7 thereunder.

Respondent

2. Delphia is a Delaware corporation with its principal place of business in Toronto, Canada. Delphia was registered with the Commission as an investment adviser from September 2019 through January 2024. According to its Form ADV Part 1A filed on September 1, 2023, it had approximately \$187 million of regulatory assets under management. Delphia managed approximately \$7 million for about 29,000 individual retail accounts through robo-advisory services and approximately \$180 million for five pooled investment vehicles. Delphia filed a Form ADV-W on January 26, 2024 in which it stated that the firm had ceased to conduct advisory services as of December 31, 2023. Delphia moved the five pooled investment vehicles to a newly formed adviser.

Background

Delphia's Plan to Utilize Client Data in Artificial Intelligence and Machine Learning Never Materialized

3. When Delphia started its robo-adviser business in 2019 it developed algorithms to manage retail client portfolios based upon different investment objectives and risk profiles for its clients. While the algorithms were based upon a variety of information sources, including third-

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

party data, Delphia intended to use artificial intelligence and machine learning to collect data from its clients (such as from social media, banking, credit card, online purchases, etc.) as inputs into its algorithms.

4. Delphia, however, never accomplished this goal. While Delphia did collect certain client data intermittently between 2019 and 2023, it never used that data with artificial intelligence or machine learning or otherwise used that data in any way as inputs into its investing algorithms.

Delphia's False and Misleading Statements Concerning its Use of Artificial Intelligence and Machine Learning

5. Starting in August 2019, Delphia made false and misleading statements regarding the use of artificial intelligence and machine learning in its Form ADV Part 2A brochures, in a press release, and on its website.

6. In its Form ADV brochures from August 2019 through 2021, Delphia claimed that its advice was “powered by the insights it makes when individuals . . . connect their social media, banking, and other accounts . . . or respond to Delphia’s questionnaires” which make its investment decisions “more robust and accurate[.]” Delphia also stated that this client data was used in “a predictive algorithmic model” for the selection of “stocks, ETFs and options[.]”

7. In a December 2019 press release, Delphia claimed that it was “the first investment adviser to convert personal data into a renewable source of investable capital . . . that will allow consumers to invest in the stock market using their personal data.” Delphia further stated that “Delphia uses machine learning to analyze the collective data shared by its members to make intelligent investment decisions.”

8. Starting in November 2020 through August 2023, Delphia’s website claimed that Delphia “turns your data into an unfair investing advantage” and that Delphia “put[s] collective data to work to make our artificial intelligence smarter so it can predict which companies and trends are about to make it big and invest in them before everyone else.”

9. Each of these statements was false and misleading because Delphia had not developed the represented capabilities. These statements were material because Delphia had represented to current and prospective clients that its use of client data as inputs into its investing algorithms was a key differentiating characteristic from other advisers.

Delphia Acknowledged in July 2021 that It Did Not Have the Represented Artificial Intelligence Capabilities

10. During an examination, the Division of Examinations discovered the various misleading statements outlined above. In a response to SEC staff’s questions, Delphia admitted to the Division of Examinations in July 2021 that it had not used any of its clients’ data and had not created an algorithm to use client data.

11. Delphia updated the statements in its Form ADV Part 2A on August 5, 2021 to state that “[c]urrently, [Delphia] does not use [client data] to make investment decisions for its Clients.” Delphia, however, did not identify the new disclosures in its summary of material changes section of the Form ADV brochure even though the change related to a core part of its retail advisory program.

12. Delphia also informed the Division of Examinations in October 2021 that it would review all current marketing and regulatory disclosure documents and take action to correct any false and misleading statements regarding the use of client data. Delphia also created the role of Compliance Manager for its compliance team and retained two outside compliance consulting firms.

13. Additionally, Delphia took certain further actions to correct various statements regarding the use of client data. Specifically, in communications with certain investors, it noted that client data was not being used as a data source for its algorithms because it had not yet collected enough client data to provide meaningful insights.

Delphia Continued to Make False and Misleading Statements Concerning its Use of Client Data after October 2021

14. Delphia nonetheless continued to make certain false and misleading statements in advertisements regarding the use of client data in various formats through August 2023. For example, investors who joined Delphia in 2021 and 2022 were sent an email communication stating that their data was “helping [Delphia] train [its] algorithm for pursuing ever better returns” and that Delphia “will pool your data with everyone else’s to power our algorithm.” In addition, a social media post made in 2022, which remained until 2023, provided that Delphia’s “proprietary algorithm uses the data being invested by our members, so we can make stock selections across thousands of publicly traded companies up to seven financial quarters in the future.” Also, a press release in November 2022 claimed that “Delphia’s proprietary algorithms combine the data invested by its members with commercially available data, to make predictions across thousands of publicly traded companies up to two years into the future.” Each of these statements was false and misleading because Delphia had not developed the represented capabilities. These statements were material because Delphia had represented to current and prospective clients that its use of client data as inputs into its investing algorithms was a key differentiating characteristic from other advisers.

Compliance Deficiencies

15. Delphia failed to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder. Specifically, Delphia failed to adopt and implement policies necessary to ensure that advertisements that Delphia published, circulated, or distributed were accurate and did not contain misleading or untrue statements. While Delphia did have some advertising policies and procedures, it lacked policies and procedures relating to social media. Further, Delphia had a number of employees and consultants involved in their advertising review and approval process. Delphia failed to lay out a clear advertising review

and approval process, either in its policies and procedures or otherwise, that would enable its personnel and consultants to understand their respective roles and responsibilities in that process. As a result, Delphia corrected certain false and misleading statements regarding the use of client data after the SEC exam but continued to misrepresent its use of client data in other areas.

Delphia's Cooperation

16. In determining to accept the Offer, the Commission considered cooperation afforded the Commission staff.

Violations

17. As a result of the conduct described above, Delphia willfully violated Section 206(2) of the Advisers Act, which makes it unlawful for any investment adviser, directly or indirectly, to “engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.” Scierer is not required to establish a violation of Section 206(2), but rather a violation may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n. 5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)).

18. As a result of the conduct described above, Delphia willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-1 thereunder, which prohibit any registered investment adviser from, directly or indirectly, disseminating any advertisement that, among other things, includes any untrue statement of material fact, or omits to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading or include information that would reasonably be likely to cause an untrue or misleading implication or inference to be drawn concerning a material fact relating to the investment adviser.²

19. As a result of the conduct described above, Delphia willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 under the Advisers Act which requires, 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 adopted thereunder.

IV.

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

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

² The Commission amended Rule 206(4)-1 in 2020, with a compliance date of November 4, 2022. Delphia's conduct violated both the original version and the amended version of the rule.

A. Delphia 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 Rules 206(4)-1 and 206(4)-7 thereunder.

B. Delphia is censured.

C. Delphia shall, within 10 days of entry of this Order, pay a civil money penalty of \$225,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934. 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 Delphia (USA) Inc. 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 Kimberly Frederick, Assistant Director, Asset Management Unit, Securities and Exchange Commission, Byron G. Rogers Federal Building, 1961 Stout Street, Suite 1700, Denver, CO 80294-1961.

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