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COMMONWEALTH OF PENNSYLVANIA 2023 DEC 28 PM 3:51
DEPARTMENT OF BANKING AND SECURITIES

PA DEPARTMENT OF BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF BANKING AND	:	
SECURITIES, BUREAU OF SECURITIES	:	
COMPLIANCE AND EXAMINATIONS	:	Docket No.: 230026 (SEC-OSC)
	:	
v.	:	
	:	
DUKE AND DUKE WEALTH	:	
MANAGEMENT, LLC	:	
MICHAEL DANIEL NEFT ¹	:	
	:	

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities (“Department”), Bureau of Securities Compliance and Examinations (“Bureau”), has conducted an investigation of the business practices of Duke and Duke Wealth Management, LLC (“Duke”) and its officers and employees. Based on the results of its investigation, the Bureau has concluded that Duke has operated in violation of the Pennsylvania Securities Act of 1972, 70 P.S. § 1-101 *et seq.* (“1972 Act”). Duke, in lieu of litigation, and without admitting or denying the allegations herein, and intending to be legally bound, hereby agrees to the terms of this Consent Agreement and Order (“Order”).

BACKGROUND

1. The Department is the Commonwealth of Pennsylvania’s administrative agency authorized and empowered to administer and enforce the 1972 Act.

¹ This Consent Agreement and Order is only applicable to Duke and Duke Wealth Management, LLC.

2. The Bureau is primarily responsible for administering and enforcing the 1972 Act for the Department.

3. Duke, CRD # 290184, was, at all times material herein, a Pennsylvania limited liability company with an address at 3359 Durham Road, Suite 100, Doylestown, Pennsylvania 18902.

4. Michael Daniel Neft (“Neft”), CRD # 345660, was, at all times material herein, an individual with an address at 3359 Durham Road, Suite 100, Doylestown, Pennsylvania 18902. At all times material herein, Neft was the owner, managing member, and chief compliance officer of Duke.

5. From in or about December 2017 to the present, Duke has been registered pursuant to Section 301 of the 1972 Act, 70 P.S. § 1-301, as an investment adviser.

6. From in or about October 2018 to January 2023, an investment adviser representative (the “Employee of Duke”) had been registered pursuant to Section 301 of the 1972 Act, 70 P.S. § 1-301, as an investment adviser representative of Duke.

7. Regulation 102.021, 10 Pa. Code § 102.021, defines “custody” as: “[f]or purposes of an investment adviser, if a related person holds directly or indirectly, client funds or securities, or has authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.”

8. “Custody” includes “[a]ny arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian on the investment adviser’s instruction to the custodian.” 10 Pa. Code § 102.021.

9. From in or about January 2018 to the present, Duke deducted its advisory fees directly from its clients' accounts that were maintained with a third-party custodian.

10. By deducting advisory fees directly from its clients' accounts, Duke, in connection with the advisory services it provides to clients, had authority to obtain possession of client funds or securities and thus had "custody" of client funds or securities as defined in Regulation 102.021, 10 Pa. Code § 102.021.

11. Pursuant to Regulation 303.042(a)(3), 10 Pa. Code § 303.042(a)(3), an investment adviser registered under the 1972 Act that has its principal place of business in Pennsylvania and has custody of client funds or securities shall maintain a minimum net worth of \$35,000.

12. An investment adviser registered under the 1972 Act that has its principal place of business in Pennsylvania is not required to maintain a minimum net worth of \$35,000, if the investment adviser has custody solely as the result of having the authority to make withdrawals from client accounts maintained by a qualified custodian to pay its advisory fee, and the investment adviser: (i) possesses written authorization from the client to deduct advisory fees from an account held by a qualified custodian; (ii) sends the qualified custodian written notice of the amount of the fee to be deducted from the client's account; (iii) sends the client a written invoice itemizing the fee, including any formulae used to calculate the fee, the time period covered by the fee and the amount of assets under management on which the fee was based; and (iv) notifies the Department in writing on Form ADV that the investment adviser intends to use the safeguards listed above. 10 Pa. Code § 303.042(a)(3)(i)(A)-(D).

13. From in or about January 2018 to January 2023, Duke did not send its clients' written invoices itemizing its advisory fees, including the formula used to calculate the fees, the

time period covered by the fees, and the amount of assets under management on which the fees were based.

14. From in or about January 2018 to the present, Duke did not notify the Department on Form ADV that it intended to utilize the safeguards listed in Regulation 303.042(a)(3)(i)(A)-(C), 10 Pa. Code § 303.042(a)(3)(i)(A)-(C).

15. Regulation 305.061(c), 10 Pa. Code § 305.061(c), requires that, to withdraw from registration as an investment adviser representative, the investment adviser for whom the investment adviser representative was employed must file the Uniform Termination Notice for Securities/Futures Industry Registration (Form U-5) or a successor form with the Department or with the Investment Adviser Registration Depository (“IARD”) within 30 days from the date of termination.

16. In or before May 2022, Duke terminated the Employee of Duke as an investment adviser representative.

17. On or about January 25, 2023, Duke filed Form U-5 for the Employee of Duke’s termination as an investment adviser representative of Duke.

18. Regulation 305.011(a), 10 Pa. Code § 305.011(a), requires registered investment advisers to exercise diligent supervision and accept final responsibility for proper supervision over the securities activities of their agents, investment adviser representatives, and employees by establishing and maintaining written procedures and a system for applying and enforcing those written procedures which are reasonably designed to achieve compliance with the 1972 Act and other securities laws and regulations.

19. From in or about December 2017 to the present, Duke employed at least one “investment adviser representative” in Pennsylvania within the definition of Section 102(j.1) of the 1972 Act, 70 P.S. § 1-102(j.1).

20. From in or about December 2017 to the present, Duke did not exercise diligent supervision over the securities activities of its investment adviser representatives by failing to establish and maintain written procedures and a system for applying and enforcing those written procedures, pursuant to Regulation 305.011(a), 10 Pa. Code § 305.011(a), in that Duke failed to establish and maintain its own written supervisory procedures or a system for applying and enforcing them.

21. At all times material herein, Duke did not establish and maintain written supervisory procedures related to its investment advisory services. In or about December 2021, Duke submitted written supervisory procedures for an unassociated entity named “AE Wealth Management” to the Bureau pursuant to its request on or about November 10, 2021.

22. The written supervisory procedures provided by Duke to the Bureau listed an individual as the Chief Compliance Officer who is not associated with Duke in any manner.

23. During the Bureau’s May 10, 2022, examination, Duke provided the Bureau with written supervisory procedures that contained procedures which were not applicable to Duke’s business model, such as references to U.S. Securities and Exchange Commission (“SEC”) registration and regulations relevant to SEC registrants when Duke is not registered with the SEC.

24. Regulation 305.011(c), 10 Pa. Code § 305.011(c), requires registered investment advisers, as evidence of compliance with their supervisory obligations, to implement, maintain, and enforce written procedures designed to achieve compliance with the 1972 Act and other securities laws and regulations.

25. From in or about December 2017 to the present, Duke did not implement, maintain, and enforce written procedures pursuant to Regulation 305.011(c), 10 Pa. Code § 305.011(c).

26. Regulation 304.071(a), 10 Pa. Code § 304.071(a), requires that an investment adviser registered with the Department must establish, implement and maintain written procedures relating to a business continuity and succession plan.

27. At all times material herein, Duke did not have any written procedures relating to a business continuity and succession plan. Accordingly, Duke failed to establish, implement and maintain the required written procedures relating to a business continuity and succession plan.

28. Regulation 304.012(a)(3), 10 Pa. Code § 304.012(a)(3), requires that every investment adviser registered under the 1972 Act shall make and keep true, accurate and current certain books, ledgers and records, including a memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of the order or instruction.

29. At all times material herein, Duke did not make and maintain memoranda related to each of its orders for the purchase or sale of securities or instructions from clients concerning the purchase, sale, receipt or delivery of securities.

30. Regulation 304.012(a)(7), 10 Pa. Code § 304.012(a)(7), requires that every investment adviser registered under the 1972 Act shall make and keep true, accurate and current certain books, ledgers and records, including originals of written communications received and copies of written communications sent by the investment adviser relating to: (i) a recommendation made or proposed to be made and any advice given or proposed to be given; (ii) a receipt,

disbursement or delivery of funds or securities; or (iii) the placing or execution of an order to purchase or sell any security.

31. At all times material herein, Duke did not make and maintain originals of written communications received and copies of written communications sent related to recommendations Duke made and advice Duke had given, the receipt, disbursement or delivery of funds or securities, or the placing or execution of an order to purchase or sell any security.

32. Regulation 304.012(a)(10), 10 Pa. Code § 304.012(a)(10), requires that every investment adviser registered under the 1972 Act shall make and keep true, accurate and current certain books, ledgers and records, including a copy in writing of each agreement entered into by the investment adviser with a client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

33. At all times material herein, Duke did not make and maintain copies of all written agreements entered into with its clients or other written agreements relating to Duke's business as an investment adviser.

34. Regulation 304.012(a)(14), 10 Pa. Code § 304.012(a)(14), requires that every investment adviser registered under the 1972 Act shall make and keep true, accurate and current certain books, ledgers and records, including a copy of the written statement and the amendment or revision, given or sent to a client or prospective client of the investment adviser under Regulation 404.011 (relating to investment adviser brochure disclosure), and a record of the dates that the written statement, and the amendment or revision, was given, or offered to be given, to a client or prospective client who subsequently becomes a client.

35. At all times material herein, Duke did not make and maintain copies of the written disclosure statement required under Regulation 404.011 and records of the dates that the written

disclosure statement required under Regulation 404.011 was provided to clients and prospective clients.

36. Regulation 304.012(a)(24), 10 Pa. Code § 304.012(a)(24), requires that every investment adviser registered under the 1972 Act shall make and keep true, accurate and current certain books, ledgers and records, including written procedures relating to the business and continuity plan required under Regulation 304.071 (relating to business continuity and succession planning).

37. At all times material herein, Duke did not make and maintain written procedures relating to its business and continuity plan required under Regulation 304.071.

38. Regulation 303.012(i), 10 Pa. Code § 303.012(i), requires that an investment adviser registered under the 1972 Act shall take steps necessary to ensure that material information contained in its Form ADV and exhibits remains current and accurate. If a material statement made in Form ADV and exhibits becomes incorrect or inaccurate, the investment adviser shall file with the Department an amendment on Form ADV within 30 days of the occurrence of the event which requires the filing of the amendment.

39. From in or about January 2018 to the present, Duke's Form ADV contained the following incorrect or inaccurate information:

- a. On Form ADV, Part 1, Item 9, Duke failed to indicate that it maintains custody of client funds as a result of direct fee deductions.
- b. On Form ADV, Part 2A, Item 19, Duke falsely indicated that it maintained a written business continuity and succession plan. However, Duke did not create and maintain a written business continuity and succession plan.

VIOLATION

40. By engaging in the acts and conduct set forth in paragraphs 3 through 5 and paragraphs 7 through 14 above, Duke engaged in acts and conduct which formed a basis to deny, suspend, revoke, or condition the registration of Duke or Censure Duke pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 303.042(a)(3)(i)(A)-(D), 10 Pa. Code § 303.042(a)(3)(i)(A)-(D).

41. By engaging in the acts and conduct set forth in paragraphs 3 through 6 and paragraphs 15 through 17 above, Duke engaged in acts and conduct which formed a basis to deny, suspend, revoke, or condition the registration of Duke or Censure Duke pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 305.061(c), 10 Pa. Code § 305.061(c), promulgated thereunder.

42. By engaging in the acts and conduct set forth in paragraphs 3 through 6 and paragraphs 18 through 25 above, Duke engaged in acts and conduct which formed a basis to deny, suspend, revoke, or condition the registration of Duke or Censure Duke pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 305.011(a) and 305.011(c), 10 Pa. Code §§ 305.011(a), 305.011(c), promulgated thereunder.

43. By engaging in the acts and conduct set forth in paragraphs 3 through 5 and paragraphs 26 through 27 above, Duke engaged in acts and conduct which formed a basis to deny, suspend, revoke, or condition the registration of Duke or Censure Duke pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 304.071(a), 10 Pa. Code § 304.071(a).

44. By engaging in the acts and conduct set forth in paragraphs 3 through 5 and paragraphs 28 through 29 above, Duke engaged in acts and conduct which formed a basis to deny,

suspend, revoke, or condition the registration of Duke or Censure Duke pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 304.012(a)(3), 10 Pa. Code § 304.012(a)(3).

45. By engaging in the acts and conduct set forth in paragraphs 3 through 5 and paragraphs 30 through 31 above, Duke engaged in acts and conduct which formed a basis to deny, suspend, revoke, or condition the registration of Duke or Censure Duke pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 304.012(a)(7), 10 Pa. Code § 304.012(a)(7).

46. By engaging in the acts and conduct set forth in paragraphs 3 through 5 and paragraphs 32 through 33 above, Duke engaged in acts and conduct which formed a basis to deny, suspend, revoke, or condition the registration of Duke or Censure Duke pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 304.012(a)(10), 10 Pa. Code § 304.012(a)(10).

47. By engaging in the acts and conduct set forth in paragraphs 3 through 5 and paragraphs 34 through 35 above, Duke engaged in acts and conduct which formed a basis to deny, suspend, revoke, or condition the registration of Duke or Censure Duke pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 304.012(a)(14), 10 Pa. Code § 304.012(a)(14).

48. By engaging in the acts and conduct set forth in paragraphs 3 through 5 and paragraphs 36 through 37 above, Duke engaged in acts and conduct which formed a basis to deny, suspend, revoke, or condition the registration of Duke or Censure Duke pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 304.012(a)(24), 10 Pa. Code § 304.012(a)(24).

49. By engaging in the acts and conduct set forth in paragraphs 3 through 5 and paragraphs 38 through 39 above, Duke engaged in acts and conduct which formed a basis to deny, suspend, revoke, or condition the registration of Duke or Censure Duke pursuant to Section 305(a)(v) of the 1972 Act, 70 P.S. § 1-305(a)(v), and Regulation 303.012(i), 10 Pa. Code § 303.012(i).

RELIEF

50. Duke shall pay the Department an administrative assessment in the amount of \$100,000.00. Payment shall be made by certified check or money order made payable to the “Department of Banking and Securities” and shall be mailed or delivered in person to the Bureau of Securities Compliance and Examinations located at 17 N. Second Street, Suite 1300, Harrisburg, Pennsylvania 17101. The assessment shall be paid as follows:

- a. \$50,000.00 within 30 days of the Effective Date of this Order, as defined in paragraph 58 below;
- b. \$4,166.66 on or before January 31, 2024;
- c. \$4,166.66 on or before February 29, 2024;
- d. \$4,166.66 on or before March 31, 2024;
- e. \$4,166.66 on or before April 30, 2024;
- f. \$4,166.66 on or before May 31, 2024;
- g. \$4,166.66 on or before June 30, 2024;
- h. \$4,166.66 on or before July 31, 2024;
- i. \$4,166.66 on or before August 31, 2024;
- j. \$4,166.66 on or before September 30, 2024;

- k. \$4,166.66 on or before October 31, 2024;
- l. \$4,166.66 on or before November 30, 2024; and
- m. \$4,166.74 on or before December 31, 2024.

51. Should Duke fail to pay the assessment as set forth in paragraph 50 above, the sanctions set forth elsewhere in the Order shall continue in full force and effect until full payment is made. However, this provision shall not be construed as affording Duke the option of either paying the assessment or being indefinitely subject to the sanctions.

52. Should Duke fail to comply with any and/or all provisions of this Order, the Department may impose additional sanctions and costs and seek other appropriate relief subject to Duke's right to a hearing pursuant to the 1972 Act.

53. This Order is not intended to constitute and shall not be interpreted to constitute a basis for disqualification of Duke under Federal or State securities laws, rules, or regulations or any regulatory organization's rules or regulations.

FURTHER PROVISIONS

54. Consent. Duke hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's authority under the 1972 Act and agrees that it understands all of the terms and conditions contained herein. Duke, by voluntarily entering into this Order, waives any right to a hearing or appeal concerning the terms, conditions, and/or penalties set forth in this Order.

55. Entire Agreement. This Order contains the entire agreement between the Department and Duke. There are no other terms, obligations, covenants, representations,

statements, conditions, or otherwise, of any kind whatsoever concerning this Order. This Order may be amended in writing by mutual agreement by the Department and Duke.

56. Binding Nature. The Department, Duke, and all officers, owners, directors, employees, heirs and assigns of Duke intend to be and are legally bound by the terms of this Order.

57. Counsel. This Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

58. Effectiveness. Duke hereby stipulates and agrees that the Order shall become effective on the date the Bureau executes the Order (“Effective Date”).

59. Other Enforcement Action.

(a) The Department reserves all of its rights, duties, and authority to enforce all statutes, rules, and regulations under its jurisdiction against Duke in the future regarding all matters not resolved by this Order.

(b) Duke acknowledges and agrees that this Order is only binding upon the Department and not any other local, state or federal agency, department, or office regarding matters within this Order.

60. Authorization. The parties below are authorized to execute this Order and legally bind their respective parties.

61. Counterparts. This Order may be executed in separate counterparts, by facsimile or by PDF.

62. Titles. The titles used to identify the paragraphs of this document are for the convenience of reference only and do not control the interpretation of this document.

63. Finding. The Department finds that it is necessary and appropriate in the public interest and for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the 1972 Act to issue this Order.

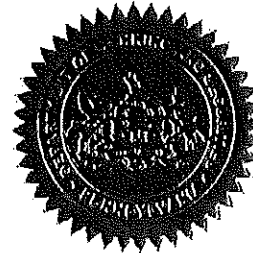
WHEREFORE, in consideration of the foregoing, including the recital paragraphs, the Commonwealth of Pennsylvania, Department of Banking and Securities, Bureau of Securities Compliance and Examination and Duke and Duke Wealth Management, LLC, intending to be legally bound, do hereby execute this Consent Agreement and Order.

**FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES
BUREAU OF SECURITIES COMPLIANCE AND EXAMINATIONS**

Redacted

Eric Pistilli, Deputy Secretary for Securities

Date: 12/28/23



FOR DUKE AND DUKE WEALTH MANAGEMENT, LLC

Redacted

(Signature)

MICHAEL NEFT
(Print Officer Name)

Date: 12-28-23