

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 105556 / May 27, 2026

ADMINISTRATIVE PROCEEDING

File No. 3-22645

In the Matter of

**DAVID LERNER
ASSOCIATES, INC.,**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 15(b)(4) AND
21C OF THE SECURITIES EXCHANGE
ACT OF 1934, 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)(4) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against David Lerner Associates, Inc. (“DLA” 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 the findings herein, except as to the Commission’s jurisdiction over Respondent 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)(4) and 21C of the Securities Exchange Act of 1934, 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:

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.

Summary

1. These proceedings concern DLA's failure to comply with Regulation Best Interest ("Regulation BI") in two areas.

2. First, from June 30, 2020 until at least September 15, 2024, DLA, through its registered representatives, failed to exercise reasonable diligence, care, and skill to understand the potential risks, rewards, and costs associated with at least 253 recommendations to retail customers to sell Class A mutual fund shares held for less than one year and nearly simultaneously buy Class A mutual fund shares in a different fund family, which collectively imposed new upfront sales charges of \$230,087.53 paid to DLA and its registered representatives. In making these recommendations, DLA registered representatives did not adequately consider cost, including the availability of Class A mutual fund shares within the same fund family, which the customer could buy without incurring a new sales charge. Accordingly, DLA willfully violated Regulation BI's Care Obligation found in Exchange Act Rule 15l-1(a)(2)(ii)(A) (the "Reasonable Basis Prong").

3. Second, from June 30, 2020 until April 2026, DLA did not establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Regulation BI with respect to the firm's use of "Customized Investment Plans" ("CIPs") with retail customers. Each CIP was a self-described "individualized investment plan" for a specific retail customer, which identified a set of "suggested" or "potential" investments for the customer's consideration, including, for each potential investment, the name of the security, a specific amount to invest, the number of shares that would be purchased for that investment amount, the price per share, and the estimated distribution. In the aggregate, hundreds of retail customers purchased investments listed in their CIPs that generated at least \$2.5 million in transaction fees for DLA and its registered representatives. Because DLA did not consider CIPs to be "recommendations" under Regulation BI, it did not have written policies and procedures reasonably designed to help ensure that CIPs were prepared and presented to retail customers in accordance with Regulation BI. Accordingly, DLA willfully violated Regulation BI's Compliance Obligation found in Exchange Act Rule 15l-1(a)(2)(iv).

4. By willfully violating these Regulation BI component obligations, DLA also willfully violated Regulation BI's General Obligation found in Exchange Act Rule 15l-1(a)(1).

Respondent

5. **David Lerner Associates, Inc.** is a New York corporation with its principal place of business in Syosset, New York. DLA has been registered with the Commission as a broker-dealer since October 1976. DLA has branch offices throughout the United States and approximately 135 registered representatives.

Facts

A. DLA's Recommendations of Short-Term Class A Mutual Fund Switches

6. Mutual funds are comprised of several classes of shares, which have different cost structures. Class A mutual fund shares typically impose an upfront sales charge on customers, in addition to ongoing marketing and distribution fees, known as 12b-1 fees. Class C mutual fund shares, by contrast, typically do not have an upfront sales charge, but charge higher ongoing expenses than Class A mutual fund shares. Because of these upfront sales charges, Class A shares are typically regarded as longer-term investments and are not generally considered appropriate for short-term trading, because the customer usually must hold the Class A mutual fund shares for a long enough period of time to recoup the upfront sales charge.

7. Mutual fund switching occurs when shares of one mutual fund are sold and the proceeds are used to purchase shares in another mutual fund. A switch involving the sale and purchase of Class A mutual fund shares in different fund families typically causes a customer to incur a new upfront sales charge, which reduces potential investment returns. A switch involving the sale and purchase of Class A mutual fund shares within the same fund family, on the other hand, typically does not impose any new upfront sales charge.

8. During the period June 30, 2020 to September 15, 2024, DLA registered representatives recommended at least 253 mutual fund switch transactions to at least 195 retail customers involving (i) the sale of Class A mutual fund shares held for less than one year and (ii) the purchase of Class A mutual fund shares in a different fund family, which included a new upfront sales charge. Virtually all of these switches were between funds with similar investment objectives and/or between funds in different families when a switch to a fund within the same family was available without a sales charge.

9. By contrast, during the period June 30, 2020 to September 15, 2024, there were only 93 mutual fund switch transactions involving (i) the sale of Class A mutual fund shares held for less than one year and (ii) the purchase of Class A shares of a different mutual fund, generally within the same fund family, at no additional cost.

10. The firm's "Policy for Regulation Best Interest" ("Regulation BI Policy") directed DLA registered representatives to "understand and consider the potential costs associated with the recommendation and have a reasonable basis to believe that the recommendation does not place the financial or other interest of DLA or [the registered representative] ahead of the interest of the client or prospect." It also stated that registered representatives should "consider evaluating 'reasonably available alternatives'" and, "[w]hen making a recommendation to switch from one fund to another," "explain the reason(s) and document such in the switch letter to be signed by the client." The Regulation BI Policy further instructed registered representatives to "document their Reg BI rationale" for recommendations made to retail customers "in the notes section of [DLA's Sales Relationship Management]" platform.

11. Each switch letter stated that "[s]urrender charges and/or sales charges may be incurred when a fund from one mutual fund family is sold and the proceeds are used to purchase a

fund in a different family,” and generally identified by percentage any new upfront sales charge that would be imposed as a result of the mutual fund switch transaction.

12. None of the switch letters or notes for the 253 recommended mutual fund switch transactions that imposed new upfront sales charges show that the registered representatives, in making the recommendations, considered the availability of a same-family fund (which typically would not impose any new sales charge) instead of a different-family fund (which would impose a new sales charge), or considered that the customers had incurred upfront sales charges when they purchased Class A mutual fund shares less than a year before the registered representatives recommended a switch to Class A mutual fund shares in a different fund family.

13. As a result of these switch recommendations, retail customers collectively incurred \$230,087.53 in new upfront sales charges paid to DLA. The firm paid 45% of this amount to the DLA registered representatives who made the recommendations and retained the remaining 55%, or \$126,548.14.

B. DLA Willfully Violated the Reasonable Basis Prong of Regulation BI’s Care Obligation

14. The Reasonable Basis Prong of Regulation BI’s Care Obligation requires that a broker-dealer or its associated person (including a registered representative), in making a recommendation of any securities transaction or investment strategy involving securities to a retail customer, exercise reasonable diligence, care, and skill to understand the potential risks, rewards, and costs associated with the recommendation, and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers. Exchange Act Rule 15c-1(a)(2)(ii)(A).

15. DLA, through its registered representatives, failed to exercise reasonable diligence, care, and skill to understand the potential risks, rewards, and costs associated with the above-described mutual fund switch recommendations, because it did not adequately consider the costs to retail customers of selling Class A mutual fund shares after holding them for less than a year only to use the proceeds of such sales to purchase Class A mutual fund shares in a different fund family. As a result, at least 195 retail customers paid sales charges that they would not have incurred if they had instead purchased Class A mutual fund shares within the same fund family.

16. By not exercising reasonable diligence, care, and skill to understand the potential risks, rewards, and costs associated with these recommendations, DLA willfully violated the Reasonable Basis Prong of Regulation BI’s Care Obligation.

C. DLA’s Use of “Customized Investment Plans”

17. In early 2019, DLA developed a new program that enabled its registered representatives to create “individualized investment plans” to present to prospective and existing retail customers. DLA called these documents “Customized Investment Plans,” “Customized Investment Proposals,” or “CIPs.”

18. The cover page of each three-page CIP had the heading “Investment Plan Customized For: [Name of Recipient],” indicated that it was “Prepared by: [Name of Registered Representative],” and included the registered representative’s contact information.

19. The second page of each CIP opened with the following paragraph:

We appreciated the opportunity to present you with this individualized investment plan. David Lerner Associates has been focused on investments that are designed to provide interest, dividends and distributions for more than 43 years. We understand that everyone is different, and that is why we treat each of our clients on an individual basis. We have prepared these suggested investments for your consideration.

20. Below the opening paragraph, the CIP then presented a table detailing a set of suggested investments, including, for each suggested investment, the name of the security, a specific amount to invest, the number of shares that would be purchased for that investment amount, the price per share, and the estimated distribution. Each CIP typically listed potential investments in three to five specific securities, generally including at least one DLA proprietary product. The second page of the CIP also included a “Distribution Breakdown” pie chart showing the estimated distribution for each investment and an “Investment Breakdown” bar chart showing the proposed investment amount for each investment.

21. The third and last page of each CIP contained certain disclosures, including that the CIP “is not an offer to purchase securities,” “[e]xact investments recommended can only be determined when we learn more about your financial goals and objectives,” and “neither DLA, nor its [registered representatives], are acting as fiduciaries in connection with this proposed investment plan.” It also contained footnotes about sales charges, distribution percentage rates, and pricing dates.

22. DLA established a written “Policy for Customized Investment Proposal” (“CIP Policy”) in May 2019 that outlined certain requirements for the firm’s registered representatives and branch managers. Among other things, the CIP Policy stated, with respect to preparing CIPs for prospective customers, that registered representatives “need[] to collect at a minimum . . . investment objective, risk tolerance, and time horizon” information. To prepare CIPs for existing customers, registered representatives needed to have a “Client Profile” and an “Account Profile,” “which include income, liquid net worth, investment time horizon, risk tolerance and investment objectives.” The CIP Policy also stated that investments in the CIP “may be diversified among products that are designed to provide interest, dividends and/or distributions,” and “may include” mutual funds, bonds, and variable annuities “based on the client’s most recent Client Profile . . . and Account Profile,” and that certain “disclosures/prospectuses are required to accompany the CIP” (e.g., summary prospectuses and fact sheets for mutual funds listed in the CIP). It further explained that “Branch Manager approval is required prior to print and distribution of the CIP,” and the branch manager “must review the CIP to determine if the items selected in terms of size, type and level appear appropriate and relevant to the prospect or client’s suitability profile or information.” The CIP Policy did not otherwise address the selection of investments.

23. The CIP Policy did not require either registered representatives or branch managers to evaluate whether the investments in a CIP complied with the obligations of Regulation BI. Moreover, in practice, DLA failed to consistently enforce the CIP Policy's branch manager review requirements. The CIP Policy remained in place without modification until April 2026.

24. In June 2019, the Commission adopted Regulation BI and set a compliance date of June 30, 2020. DLA established its written Regulation BI Policy in June 2020. The Regulation BI Policy did not address CIPs or provide guidance to DLA registered representatives and branch managers on how to prepare and present CIPs to retail customers in accordance with Regulation BI because DLA took the position that CIPs were not "recommendations" and, therefore, were not subject to Regulation BI. For the same reason, DLA did not make any changes to its CIP Policy in response to Regulation BI. Notwithstanding its position that CIPs were not recommendations, DLA trained its registered representatives to use CIPs to persuade prospective and existing retail customers to make the investments listed therein.

25. From January 2021 until March 2022, the Commission's Division of Examinations examined DLA and identified several Regulation BI deficiencies, which were memorialized in a May 2022 deficiency letter ("Deficiency Letter"). Among other things, the Deficiency Letter cited DLA for failing to treat CIPs as recommendations and, as a result, failing to comply with Regulation BI.

26. After receiving the Deficiency Letter, DLA maintained its position that CIPs were not recommendations under Regulation BI and did not make any changes to its CIP Policy or Regulation BI Policy.

27. DLA did, however, make certain changes to the CIP template in November 2022. On the cover page, DLA added a footer about investments carrying risk, that past performance does not guarantee future results, and to read prospectuses before investing. On the second page, DLA added a "Customized Investment Plan for: [Name of Recipient]" header and changed the final sentence in the opening paragraph from "We have prepared these suggested investments for your consideration" to "We have prepared these examples of potential investments for your consideration." Lastly, on the third page, DLA added a "Customized Investment Plan for: [Name of Recipient]" header and certain disclosures, including that "[t]he potential investments listed above are examples of the types of products [DLA] has available to help you achieve your investment goals," "for illustrative purposes only," and "based on information currently provided by you to DLA including, but not limited to, your investment objective(s), risk tolerance, time horizon and liquidity needs," and that "your DLA [registered representative] will gather additional information, as needed, from you to ultimately insure that any potential recommendations are in your best interests." These changes to the CIP template did not alter that the CIPs were recommendations.

28. Between June 30, 2020 and September 15, 2024, DLA registered representatives prepared, and branch managers approved, approximately 2,500 CIPs for retail customers. Within thirty days of being presented with a CIP, hundreds of retail customers purchased some or all of the investments listed in the CIP. In the aggregate, these purchases totaled approximately \$78 million,

generating approximately \$2.5 million in transaction fees for DLA and its registered representatives.

29. In April 2026, DLA revised its written policies and procedures. Those changes included a new written policy requiring DLA registered representatives to “presume that the contents of [the] CIP constitute[] a recommendation” and to ensure such contents meet “the obligations of Reg[ulation] BI, in particular its Care Obligation.”

D. DLA Willfully Violated Regulation BI’s Compliance Obligation

30. Regulation BI’s Compliance Obligation requires a broker-dealer to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Regulation BI. Exchange Act Rule 15c-1(a)(2)(iv).

31. During the period June 30, 2020 to April 2026, DLA failed to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Regulation BI because its written policies and procedures did not address CIPs as “recommendations” that must be prepared and presented to retail customers in accordance with Regulation BI, or provide guidance to DLA registered representatives and branch managers on how to do so.

32. “[T]he determination of whether a broker-dealer has made a recommendation that triggers application of” Regulation BI “turn[s] on the facts and circumstances of the particular situation” and “is not susceptible to a bright line definition.” Regulation Best Interest: The Broker-Dealer Standard of Conduct, Exchange Act Release No. 86031 (June 5, 2019), 84 FR 33318, 33335 (June 12, 2019). Relevant factors include “whether the communication ‘reasonably could be viewed as a ‘call to action’” and ‘reasonably would influence an investor to trade a particular security or group of securities.’” *Id.* “The more individually tailored the communication to a specific customer or a targeted group of customers about a security or group of securities, the greater the likelihood that the communication may viewed as a ‘recommendation.’” *Id.* This approach to determining whether a “recommendation” has been made is “consistent with precedent under the anti-fraud provisions of the federal securities laws as applied to broker-dealers, and with how the term has been applied under the rules of self-regulatory organizations.” *Id.* at 33337.

33. CIPs are “recommendations” under Regulation BI because they are “individually tailored . . . to a specific customer,” “‘reasonably would influence an investor to trade a particular security or group of securities,’” and “‘reasonably could be viewed as a ‘call to action.’” *Id.* at 33335.

34. DLA’s Regulation BI Policy, however, did not address CIPs or provide guidance to the firm’s registered representatives and branch managers on how to prepare and present CIPs to retail customers in accordance with Regulation BI.

35. DLA’s CIP Policy likewise did not provide guidance to the firm’s registered representatives and branch managers on how to prepare and present CIPs to retail customers in accordance with Regulation BI. Among other things, the CIP Policy did not require DLA registered representatives, in preparing and presenting CIPs, to comply with the Customer-Specific

Prong of Regulation BI's Care Obligation—*i.e.*, to exercise reasonable diligence, care, and skill to have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile and the potential risks, rewards, and costs associated with the recommendation and does not place the financial or other interest of the broker-dealer or its associated persons ahead of the interest of the retail customer. Exchange Act Rule 15l-1(a)(2)(ii)(B). Further, DLA did not consistently enforce the CIP Policy.

36. By not establishing, maintaining, and enforcing written policies and procedures reasonably designed to achieve compliance with Regulation BI, DLA willfully violated Regulation BI's Compliance Obligation.

Violations

37. As a result of the conduct described above, DLA willfully² violated Rules 15l-1(a)(1), 15l-1(a)(2)(ii)(A), and 15l-1(a)(2)(iv) under the Exchange Act.

Disgorgement and Prejudgment Interest

38. The disgorgement and prejudgment interest ordered in Section IV.C below is consistent with equitable principles and does not exceed Respondent's net profits from its violations, and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid pursuant to Section IV.C in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

IV.

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

Accordingly, pursuant to Sections 15(b)(4) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent DLA cease and desist from committing or causing any violations and any future violations of Rules 15l-1(a)(1) and 15l-1(a)(2) under the Exchange Act.

B. Respondent DLA is censured.

² "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange 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).

C. Respondent DLA shall, within 10 days of the entry of this Order, pay disgorgement of \$126,548.14, prejudgment interest of \$15,132.56, and a civil money penalty of \$60,000 to the Securities and Exchange Commission. If timely payment of disgorgement and prejudgment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of the civil money penalty 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 David Lerner Associates, 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 Mark Sylvester, Associate Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, prejudgment interest, and penalties referenced in Section IV.C 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.

Vanessa A. Countryman
Secretary