UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5802 / July 26, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20427

In the Matter of **MIGHTY OAK STRONG AMERICA INVESTMENT COMPANY,** **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 Mighty Oak Strong America Investment Company ("Mighty Oak Strong America" 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 finds that:

Summary

1. This matter involves Mighty Oak Strong America's failure to file with the Commission and to deliver to retail investor clients its Form CRS. Mighty Oak Strong America was required to file its initial Form CRS with the Commission as Part 3 of its Form ADV and to begin delivering its Form CRS to prospective and new retail investor clients, as applicable, by June 30, 2020. Mighty Oak Strong America was further required to deliver its Form CRS to existing retail investor clients by July 30, 2020. Respondent failed to file and deliver Form CRS by these deadlines, not becoming compliant until in or after late January 2021. As a result, Mighty Oak Strong America violated Advisers Act Section 204 and Rules 204-1 and 204-5 thereunder.

Respondent

2. Mighty Oak Strong America is a Pennsylvania corporation with its principal place of business in Mechanicsburg, Pennsylvania. Mighty Oak Strong America has been registered with the Commission as an investment adviser since July 31, 2015. On its Form ADV, dated March 25, 2021, Mighty Oak Strong America reported that it had approximately $254,678,127 in regulatory assets under management and 144 individual clients.

Facts

3. On June 5, 2019, the Commission adopted Form CRS and rules creating new requirements—the Form CRS Filing Requirement and the Form CRS Delivery Requirement (collectively, the "Requirements")—for Commission-registered investment advisers offering services to a retail investor.[1] *See Form CRS Relationship Summary; Amendments to Form ADV*, Release Nos. 34-86032 & IA-5247 (June 5, 2019) (effective September 10, 2019) ("*Form CRS Adopting Release*").

4. *The Form CRS Filing Requirement*. First, Rule 204-1(e) under the Advisers Act requires all Commission-registered investment advisers offering services to a retail investor ("Retail RIAs") to amend their Form ADV by electronically filing on the Investment Adviser Registration Database ("IARD") an initial Form CRS satisfying the requirements of Part 3 of Form ADV no later than June 30, 2020.

5. *The Form CRS Delivery Requirement*. Second, Rule 204-5 under the Advisers Act requires Retail RIAs to deliver their current Form CRS to each retail investor client. Specifically, under Rule 204-5(b) under the Advisers Act, the Retail RIA must deliver: (1) to each retail investor client its current Form CRS before or at the time the firm enters into an investment advisory contract with that client; and (2) to each retail investor client who is an existing client the Retail RIA's current Form CRS before or at the time the firm:

[1] For purposes of Form CRS, the term "retail investor" means "a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family or household purposes." Rule 204-5(d)(2) under the Advisers Act.

- opens a new account that is different from the retail investor client's existing account(s);
- recommends that the retail investor client roll over assets from a retirement account into a new or existing account or investment; or
- recommends or provides a new investment advisory service or investment that does not necessarily involve the opening of a new account and would not be held in an existing account.

See Rule 204-5(b)(1) & (b)(2). Rule 204-5(b)(3) also requires Retail RIAs to post their current Form CRS prominently on their website, if they have one, in a location and format that is easily accessible to retail investors. The deadline for Retail RIAs to begin complying with the Form CRS Delivery Requirement was June 30, 2020 for prospective and new retail investor clients and July 30, 2020 for the initial delivery to existing retail investor clients. *See* Rule 204-5(e)(1) & (e)(2); *Form CRS Adopting Release* at 239, 242, 406-407; Form ADV, Part 3: Instructions to Form CRS, General Instruction 7.C (Sept. 2019).

6. Mighty Oak Strong America failed to comply with the Requirements by its regulatory deadlines, and began complying only after the Division of Examinations ("EXAMS") contacted the firm regarding the failure to file its Form CRS. Specifically, EXAMS contacted Mighty Oak Strong America's Chief Compliance Officer by email on October 14, 2020 to alert him that the firm had failed to file Form CRS. Mighty Oak Strong America, however, still did not file its Form CRS. On February 8, 2021, EXAMS again contacted Mighty Oak Strong America but this time to announce an examination relating to the firm's failure to file Form CRS. Mighty Oak Strong America finally filed Form CRS with the Commission on March 25, 2021, and the firm did not deliver Form CRS to its existing retail investor clients until between March 26, 2021 and March 29, 2021. In addition, Mighty Oak Strong America failed to post Form CRS on its website until at least March 29, 2021.

Violations

7. As a result of the conduct described above, Mighty Oak Strong America willfully[2] violated Section 204 of the Advisers Act and Rules 204-1 and 204-5 thereunder.

[2] "Willfully," for purposes of imposing relief under 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).

IV.

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

Accordingly, pursuant to Sections 203(e) and 203(k) 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 Advisers Act Section 204 and Rules 204-1 and 204-5 thereunder.

B. Respondent is censured.

C. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $25,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Securities Exchange Act of 1934 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 Mighty Oak Strong America 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: Stephen E. Donahue, Assistant Regional Director, Asset Management Unit, U.S. Securities and Exchange Commission, 950 East Paces Ferry Road, N.E., Suite 900, Atlanta, Georgia 30326.

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