

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5826 / August 19, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20466

In the Matter of

SOFI WEALTH, LLC.

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 SoFi Wealth, LLC (“SoFi Wealth” 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

These proceedings arise out of breaches of fiduciary duty by San Francisco-based robo adviser SoFi Wealth, LLC ("SoFi Wealth") in connection with its April 2019 investment of assets of approximately 20,000 automated portfolio accounts into two new proprietary exchange-traded funds ("ETFs") sponsored by its parent company, Social Finance, Inc. ("SoFi"). SoFi Wealth approved the inclusion of these SoFi-sponsored ETFs to replace third-party ETFs that had a different asset allocation. At the time, SoFi Wealth failed to provide its clients with full and fair disclosure of its conflicts of interest relating to the transactions, including that it (1) had a preference for placing clients into SoFi's newly-created proprietary ETFs rather than third-party ETFs, and SoFi's economic interest in these proprietary ETFs presented a conflict of interest for SoFi Wealth, (2) was investing client assets in these proprietary ETFs to help market the SoFi brand as having a broader array of services and products than previously offered, and (3) intended to use client assets to capitalize the new SoFi ETFs with significant investment on their second day of trading, making the ETFs more liquid and favorable to the market. To accomplish these objectives, SoFi Wealth sold clients' holdings of third-party ETFs, causing many clients to realize taxable gains.

Respondent

1. SoFi Wealth, LLC is an internet-based registered investment adviser incorporated in Delaware with its principal place of business in San Francisco, California, that utilizes proprietary software to provide investment advice to individuals on asset allocation (commonly referred to as a "robo adviser"). It is a wholly-owned subsidiary of Social Finance, Inc. and has been registered with the Commission as an investment adviser since June 14, 2013. According to its Forms ADV, as of March 29, 2019, SoFi Wealth had approximately \$79.4 million in assets under management, which it managed on a discretionary basis, and as of March 31, 2021, SoFi Wealth had approximately \$338.7 million in assets under management, which it managed on a discretionary basis.

Relevant Party

2. Social Finance, Inc. ("SoFi") is a Delaware corporation with its principal place of business in San Francisco, California and the parent company to SoFi Wealth. SoFi is an online financial services provider of student loan refinancing, mortgages, personal loans, credit cards, and investing and banking services through their mobile and desktop interfaces. SoFi is the sponsor of the SoFi ETFs, including SoFi SELECT 500 ETF ("SFY") and SoFi NEXT 500 ETF ("SFYX").

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.

SoFi Wealth Failed to Disclose Conflicts of Interest Relating to Moving Client Investments to Its Proprietary ETFs

3. In January 2019, SoFi Wealth launched SoFi Invest, an automated investing program. When it launched, SoFi Invest invested SoFi Wealth's client assets in various strategies through allocations to ETFs sponsored and managed by third parties. The mix of funds SoFi Wealth selected was based on client risk tolerance and it invested client assets on a discretionary basis. Relevant to the findings herein, among the investments in SoFi invest were third-party index ETFs with disclosed expense ratios ranging from 0.03% – 0.10%, with the majority of client assets in the ETF with a 0.03% expense ratio.

4. In early 2019, SoFi began planning to create its own proprietary ETFs to replace third-party ETFs in the SoFi Invest program. SoFi Wealth intended to use client assets managed in the SoFi Invest program to infuse cash into the newly-created, proprietary ETFs to capitalize the ETFs on the second day of trading. SoFi Wealth planned to use the new ETFs to market and increase awareness of the SoFi brand beyond its current client base. SoFi Wealth sought to use the ETFs to show that SoFi could provide a broader array of investment products and services.

5. On March 18, 2019, SoFi Wealth's Investment Committee approved the inclusion of two new proprietary ETFs in the program, SFY and SFYX, to replace the third-party ETFs that had a different asset allocation. SoFi Wealth's Investment Committee gave an undisclosed preference to SFY and SFYX and did not consider other ETFs to serve as the replacements. SFY and SFYX are index-ETFs each with a disclosed expense ratio of 0.19%, which to date has been waived as described in paragraph 8 below.

6. On March 29, 2019, SoFi Wealth amended its Form ADV Part 2A (the "March 2019 brochure") to state that it would select for its clients a mix of underlying ETFs "that represent the broad asset allocation determined by these strategies, which may include ETFs for which SoFi is the sponsor." SoFi Wealth's March 2019 brochure, however, did not disclose SoFi Wealth's conflicts of interest associated with investing client assets in SoFi-sponsored ETFs. In particular, SoFi Wealth disclosed to clients that it "may" invest client assets in shares of the SoFi ETFs, despite the fact that SoFi Wealth's Investment Committee had already approved the inclusion of two of SoFi's new ETFs to replace existing third-party ETFs in the SoFi Invest portfolio. The March 2019 brochure did not disclose to clients that (1) SoFi Wealth preferred SoFi's proprietary ETFs over third-party ETFs as investment options for clients, and SoFi's financial interest in the ETFs presented a conflict of interest for SoFi Wealth that could influence SoFi Wealth's decision to invest clients' assets in these ETFs, (2) it was investing client assets in these proprietary ETFs to help market the SoFi brand as having a broader array of services and products than previously offered, and (3) it intended to use SoFi Wealth client assets to quickly provide substantial assets to the ETFs on the second day of trading, making the ETFs more attractive to potential investors. Using client assets in this way also allowed SoFi to effectively pay back the proprietary ETFs' authorized participant the day after the launch.

7. On April 11, 2019, SFY and SFYX began trading on the NYSE Arca. On April 12, 2019, SoFi Wealth transferred client assets held in approximately 20,000 automated SoFi Wealth client accounts from third-party ETFs to SFY and SFYX. To do this, SoFi Wealth sold the prior ETFs its clients held and used the proceeds of such sales to purchase positions in the SoFi ETFs. This sale triggered tax consequences for many of SoFi Wealth's clients. In particular, over 15,000 SoFi Wealth clients incurred capital gains as a result of the move into SoFi ETFs for a total of approximately \$772,000 in short-term capital gains and approximately \$662,000 in long-term capital gains. Prior to SoFi Wealth's decision to move client assets into the new SoFi ETFs, and prior to the transfer itself, SoFi Wealth did not perform any analysis to determine how the movement of client assets to its proprietary ETFs would impact its clients from a tax perspective, nor did SoFi Wealth have policies and procedures in place to address the inclusion of proprietary products in its automated investing program. After the Commission opened an investigation into the above conduct, SoFi Wealth reimbursed clients in the SoFi Invest automated investment program for tax liabilities they incurred as a result of gains realized on the April 12, 2019 sale of the third-party ETFs to buy SoFi's proprietary ETFs.

8. SoFi is not the adviser to the ETFs, but pursuant to an agreement with the adviser, SoFi is entitled to receive a fee based on the total management fee earned by the adviser. To date, however, the fee associated with the management of SFY and SFYX has been waived for a certain period of time, resulting in a current net expense ratio of 0% and no fees currently being paid to SoFi. The management fee waiver may end in the future, however, and SoFi could then earn revenue from the ETFs. SoFi Wealth opted for no-fee ETFs to bolster the SoFi ETF marketing campaign and the SoFi brand.

9. SoFi Wealth was required to give its clients sufficient information so that they could understand the conflicts of interest arising from SoFi Wealth's preference for its proprietary ETFs over others, investment of client assets into the proprietary ETFs for marketing purposes, and use of client money to capitalize the SoFi ETFs on their second day of trading. SoFi's failure to disclose all material facts to its advisory clients, including all material conflicts of interest and how those conflicts could affect the advice SoFi Wealth provided its clients was inconsistent with its duty to clients.

10. SoFi Wealth represented that taxable account strategies would be optimized using generic tax assumptions. While SoFi Wealth's descriptions about how it formulated its investment advice stated that its algorithms did not take into account the specific tax situation of individual clients, SoFi Wealth's failure to consider the potential tax impact from the April 2019 transactions was inconsistent with its duty to clients.

Compliance Deficiencies

11. During the relevant period, SoFi Wealth failed to adopt written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder. Specifically, SoFi Wealth failed to adopt written policies and procedures governing SoFi Wealth's selection, and inclusion of its proprietary products in its automated investment portfolios and the full and fair disclosure of all material conflicts of interest presented by its use of proprietary products in its automated client accounts.

Violations

12. As a result of the conduct described above, Respondent willfully² 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.” Scienter 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. 180,194-95 (1963)).

13. As a result of the conduct described above, Respondent willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

SoFi’s Remedial Efforts

14. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by SoFi Wealth and cooperation afforded the Commission staff.

Undertakings

15. Respondent has undertaken to:

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[ed]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

- a. Within 30 days of the entry of this Order, review and correct as necessary all relevant disclosure documents concerning SoFi Wealth's use of proprietary ETFs and the associated conflicts of interest therewith.
- b. Within 30 days of the entry of this Order, evaluate, update (if necessary), and review for the effectiveness of their implementation, SoFi Wealth's policies and procedures so that they are reasonably designed to prevent violations of the Advisers Act in connection with disclosures regarding SoFi Wealth's use of its proprietary ETFs and the associated conflicts of interest therewith.
- c. Within 30 days of the entry of this Order, Respondent shall provide a copy of the Order to each affected investor (i.e., those former and current clients whose assets, during the relevant period of inadequate disclosure, were transferred by SoFi Wealth into SoFi's proprietary SFY and SFYX ETFs (hereinafter, "affected investors")) via mail, email, or such other method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.
- d. Certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, 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 Jeremy Pendrey, Assistant Regional Director, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104, with a copy to the Office of Chief Counsel of the Division of Enforcement, Securities and Exchange Commission, 100 F. Street, NE, Washington, DC 20549, no later than sixty (60) days from the date of the completion of the undertakings.
- e. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates 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 the last day.

IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest to impose the sanctions agreed to in Respondent'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 Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated 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 \$300,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act 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 SoFi Wealth, LLC 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 Jeremy Pendrey, Assistant Regional Director, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104.

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.

E. Respondent shall comply with the undertakings enumerated in paragraph 15 a-d above.

By the Commission.

Vanessa A. Countryman
Secretary