UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6137 / September 19, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21110

In the Matter of **ARCADIA WEALTH MANAGEMENT, 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 Arcadia Wealth Management, Inc. ("Arcadia" or the "Respondent").

II.

In anticipation of the institution of these proceedings, the Respondent has submitted an Offer of Settlement ("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, the 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[1] that:

Summary

1. Arcadia, which registered with the Commission as an investment adviser in 2012, failed to comply with the independent verification requirement for client funds and securities for which it had custody for the period of at least 2013 through 2019, in violation of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, commonly referred to as the "custody rule."

2. Arcadia also failed to adopt and implement written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder with regard to client accounts of which it had custody, in violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondent

3. Arcadia is a New York corporation with its principal place of business in Smithtown, New York. Arcadia has been registered with the Commission as an investment adviser since its founding in 2012. As of March 2, 2022, Arcadia reported having approximately $245 million in assets under management and approximately 246 clients, most of which are individual investors.

Facts

4. The custody rule is designed to protect investment advisory clients from the misuse or misappropriation of their funds and securities. The custody rule provides that "it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the [Advisers] Act . . . for [a registered investment adviser] to have custody of client funds or securities unless" the adviser implements an enumerated set of requirements designed to prevent loss, misuse, or misappropriation of those client assets. *See* Rule 206(4)-2(a).

5. An investment adviser has custody of client assets if it holds, directly or indirectly, client funds or securities, or if it has the ability to obtain possession of those assets. *See* Rule 206(4)-2(d)(2). An adviser also has custody if it or its "related person" has possession of client funds or securities or has authority to obtain possession of them. *Id.* Custody includes, among other things, "[a]ny capacity (such as . . . trustee of a trust) that gives you or your supervised person legal ownership of or access to client funds or securities." *Id.* A "related person" is defined as any person, directly or indirectly, controlling or controlled by the adviser, and any person that is under common control with the adviser. *See* Rule 206(4)-2(d)(7). "Control" is defined as "the

[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.

power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise" and "[a] person is presumed to control a trust if the person is a trustee … of the trust." *See* Rule 206(4)-2(d)(1).

6. Under the custody rule, an investment adviser who has custody of client assets must, among other things: (i) ensure that a qualified custodian maintains the client assets; (ii) notify the client in writing of accounts opened by the adviser at a qualified custodian on the client's behalf; (iii) have a reasonable basis for believing that the qualified custodian sends account statements at least quarterly to clients; and (iv) ensure that, pursuant to a written agreement between the adviser and an independent public accountant, client funds and securities are verified by actual examination at least once each calendar year, at a time chosen by the accountant without prior notice or announcement to the adviser (the "surprise examination" requirement). *See* Rule 206(4)-2(a)(1) – (5). The written agreement must provide for the first examination to occur within six months of becoming subject to the requirement and require, among other things, that the accountant file with the Commission a certificate on Form ADV-E within 120 days of the date that the accountant chose to perform the examination as of.

7. Since at least 2013, Arcadia has had custody of two client trusts within the meaning of Rule 206(4)-2(d) due to its CEO and principal owner's position as trustee for those trusts, and his role as a related person of Arcadia. Further, Arcadia's written compliance policies and procedures identified that personnel serving as a trustee of a client trust would result in Arcadia being deemed to have custody. Arcadia acknowledged in its Form ADV filings that it had custody of these two trust accounts beginning in March 2013, which was its annual updating amendment for 2012.

8. In addition, since at least 2015, Arcadia maintained client credentials over certain client 401k and other "held away"[2] advised accounts under circumstances in which it is deemed to have custody (the "client credential accounts"). The client credentials were the client usernames and passwords to log into their respective held away accounts, which provided Arcadia with the ability to withdraw funds or securities and/or transfer them to an account not in the client's name at a qualified custodian. Arcadia began acknowledging that it had custody of these client credential accounts beginning in its March 2018 Form ADV filing, which was its annual updating amendment for 2017. Arcadia's written policies and procedures failed to address Arcadia's maintenance of client credentials or identify it as a circumstance that may result in Arcadia having custody.

9. From 2013 until June 30, 2020, however, Arcadia failed to obtain the required surprise examinations for the client accounts for which it had custody that were in accordance with the Advisers Act Rule 206(4)-2(a)(4). Arcadia was required to have obtained surprise examinations for the trust accounts beginning in at least 2013, and for the surprise examinations to also include the client credential accounts beginning in at least 2015.

[2] "Held away" advised accounts refers here to client accounts held at outside financial institutions on which Arcadia advised the clients.

10. Arcadia first asked an accountant to perform a surprise examination in March 2018, more than 5 years after Arcadia became subject to the surprise examination requirement. Even then, Arcadia failed to comply with the requirements in several ways: (i) Arcadia did not enter into a written agreement with the accountant for the surprise examination, nor was there any other reflection of the surprise examination requirements, including the "surprise" element and required time frames; (ii) Arcadia provided information to the accountant only with respect to the two trust accounts; and (iii) for at least two years the accountant failed to complete the surprise examination and the accountant has never filed a Form ADV-E. Accordingly, Arcadia violated the Custody Rule for the years 2013 to 2019.

11. Arcadia also failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Custody Rule. For example, Arcadia's written compliance policies and procedures in its Compliance Manual noted that an employee serving as a trustee of a client trust would result in Arcadia being deemed to have custody and also stated that unless the exception for advisers with custody solely because of fee debiting authority applies, that the surprise examination requirement must be pursuant to a written agreement that includes specified provisions. However, Arcadia failed to implement these policies as it did not seek to obtain a surprise examination until March 2018 and when it attempted to do so it never entered into a written agreement. Arcadia's written policies and procedures were also not reasonably designed because they did not address Arcadia's maintenance of client credentials and the Custody Rule's applicability to such a practice.

12. In March 2020, the Commission's Division of Examinations ("EXAMS") staff began an examination of Arcadia that, among other things, requested information on Arcadia's actions with respect to Custody Rule compliance. Arcadia provided the responsive information it had to the staff and obtained and provided additional information and documents it was given at that time by the accountant referenced in paragraph 10, above. Arcadia retained a new independent public accountant in late March 2020 in accordance with the surprise examination requirements of the Custody Rule, including by entering into a written agreement with the accountant containing the required provisions. That new accountant conducted a surprise examination as of its selected date of June 30, 2020, and filed a Form ADV-E report on September 28, 2020.

Violations

13. Section 206(4) of the Advisers Act prohibits an investment adviser from engaging in acts, practices or courses of business that are fraudulent, deceptive, or manipulative, as defined by the Commission in rules and regulations promulgated under the statute. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act and the rules thereunder. *See SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992). Among other things, Rule 206(4)-2 requires registered investment advisers with custody of client funds or securities to have independent public accountants conduct surprise examinations of those client funds or securities. Rule 206(4)-7 requires, among other things, that a registered investment adviser adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and rules thereunder.

14. As a result of the conduct described above, Arcadia willfully[3] violated Section 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 thereunder.

Undertakings

15. Arcadia shall require its chief compliance officer to complete thirty (30) hours of compliance training relating to the Advisers Act within one year of entry of this Order.

16. Certification of Compliance. Arcadia shall certify, in writing, compliance with the undertaking set forth above no later than sixty (60) days after completion of the undertaking. The certification shall identify the undertaking, 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 Arcadia agrees to provide such evidence. The certification and supporting material shall be submitted to Sheldon Pollock, Associate Regional Director, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004, with a copy to the Office of Chief Counsel of the Enforcement Division.

17. The Commission staff shall have the authority, in its discretion, to extend any of the procedural dates relating to the undertakings for good cause shown.

IV.

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

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

A. Arcadia cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 thereunder.

B. Arcadia is censured.

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[3] "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).

C. Arcadia shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $90,000 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.

D. 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 Arcadia Wealth Management 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 Sheldon Pollock, Associate Regional Director, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004.

E. 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.

F. Arcadia shall comply with its undertakings as enumerated in Section III, paragraphs 15-17 above.

By the Commission.

Vanessa A. Countryman
Secretary