

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6199 / December 5, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21249

In the Matter of

**Two Point Capital Management, Inc.,
and John B. McGowan,**

Respondents.

**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 Two Point Capital Management, Inc. (“Two Point” or the “Company”) and John B. McGowan (“McGowan”) (collectively referred to herein as “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have each 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 them and the subject matter of these proceedings, which are admitted, and except as provided in Section V as to Respondent McGowan, Respondents consent 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 the Respondents' Offers, the Commission finds¹:

Summary

1. These proceedings are brought against Two Point, a registered investment adviser, and McGowan, Two Point's current Chief Executive Officer ("CEO") and Chief Compliance Officer ("CCO") until 2021. Since 2012, when Two Point first registered with the Commission, Two Point failed to adopt and implement reasonably designed compliance policies and procedures, and to conduct annual reviews of its compliance program, as required by Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. Two Point also failed to establish, maintain, and enforce a written code of ethics that included provisions required by Section 204A of the Advisers Act and Rule 204A-1 thereunder.

2. Two Point also failed to follow the filing and delivery requirements with respect to Form CRS in 2020, as required by Section 204 of the Advisers Act and Rules 204-1 and 204-5 thereunder.

3. McGowan caused the violations described in Paragraphs 1 and 2.

Respondents

4. **Two Point Capital Management, Inc.**, is a New York corporation with its principal place of business in Pittsford, New York. Two Point has been registered with the Commission as an investment adviser since 2012.² As of December 31, 2021, it has approximately \$256 million of assets under management and invests on behalf of approximately 100 clients with over 200 accounts. The majority of Two Point's client base are individual investors for which Two Point provides financial planning and portfolio management services. Two Point presently employs four individuals in addition to McGowan, though McGowan is the only individual at Two Point with investment decision-making authority.

5. **John B. McGowan**, age 63, resides in Perinton, New York. He is the firm's founder, sole owner and shareholder, and CEO. McGowan served as Two Point's CCO from 2012 to 2021. Until February 2021, McGowan was the only individual responsible for implementing and developing Two Point's compliance policies and procedures and Code of Ethics. In February 2021, Two Point retained a new CCO and a third-party compliance consulting firm.

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

² Two Point de-registered with the Commission on March 26, 2013, and re-registered on September 23, 2013. The Division of Examinations completed its first examination of Two Point in 2021.

Background

Failure to Adopt and Implement Reasonably Designed Compliance Policies and Procedures

6. Section 206(4) of the Advisers Act and Rule 206(4)-(7)(a) thereunder require an investment adviser that is registered or required to be registered to adopt and implement written policies and procedures reasonably designed to prevent violations by the adviser and its supervised persons of the Advisers Act and the rules adopted thereunder.

7. From at least 2012 forward, Two Point adopted, for which McGowan was responsible, by virtue of his duties and responsibilities, as its written compliance policies and procedures, without any modification, a handbook containing certain standards of practice published by a professional trade organization (the “Professional Organization”) for candidates preparing for that organization’s examinations (the “Handbook”). Two Point failed to tailor any part of the Handbook to its client base or its investment advisory business.

8. Furthermore, the Handbook did not purport to be a model compliance manual to be adopted or incorporated by investment advisers but rather, as the document itself stated, was designed, among other things, to provide ethics-based guidance for the Professional Organization’s members and to candidates preparing for the Professional Organization’s examinations. The preface stated that the Professional Organization encouraged firms to adopt the Handbook as part of a firm’s code of ethics. It did not purport to set out compliance policies and procedures. The Handbook also did not include any specific mention of the Securities Act of 1933, the Securities Exchange Act of 1934 or the Advisers Act or the rules adopted thereunder.

9. Furthermore, Two Point failed to conduct any compliance training.

Failure to Conduct Annual Reviews

10. Under Section 206(4) of the Advisers Act and Rule 206(4)-7(b) thereunder, an investment adviser must review, no less frequently than annually, the adequacy of its compliance policies and procedures established pursuant to Rule 206(4)-7 and the effectiveness of their implementation.

11. From at least 2012 until 2021, Two Point failed to conduct annual reviews of the adequacy of its investment advisory compliance program or the effectiveness of its implementation. McGowan was responsible for Two Point’s failure to conduct the required annual reviews.

Failure to Establish, Maintain and Enforce a Written Code of Ethics Under Section 204A and Rule 204A-1 of the Advisers Act

12. Section 204A of the Advisers Act and Rule 204A-1 thereunder require an investment adviser that is registered or required to be registered to establish, maintain, and enforce a written code of ethics. Among other things, Rule 204A-1 states that a code of ethics must contain provisions that require supervised persons to comply with applicable federal securities laws

and report any violations of the code of ethics to the CCO. The code of ethics must also require certain access persons to report personal securities transactions and holdings, as well as for the investment adviser to review the reports of personal securities transactions and holdings.

13. Two Point's Code of Ethics, as adopted wholesale from the Professional Organization's Code of Ethics, for which McGowan was responsible, failed to include any of the above-referenced requirements. Two Point's Code of Ethics contained only generic, high-level descriptions as to, among other issues, "Professionalism"; "Duties to Clients/Employers"; "Conflicts of Interest"; and "Responsibilities as a [Professional Organization] Institute Member or [Professional Organization] Candidate." In adopting this off-the-shelf code of ethics from the Professional Organization, Two Point failed to meet the requirements of Section 204A and Rule 204A-1 thereunder.

14. Two Point's Code of Ethics failed to include any specific requirement that supervised persons comply with applicable federal securities laws, including the Securities Act of 1933, the Securities Exchange Act of 1934 or the Advisers Act or the rules adopted thereunder.

15. While Two Point's Code of Ethics indicated that the Company should adopt procedures regarding the reporting of securities holdings, it did not do so. It failed to adopt any requirement that (1) access persons report personal securities transactions and holdings; or (2) any such transactions and holdings be reviewed periodically. Two Point did not collect, maintain or review any such securities transaction or holdings reports, in accordance with the requirements set forth in Rule 204A-1.

Failure to Timely File and Post Form CRS

16. 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. 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").

17. 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.

18. Rule 204-5 under the Advisers Act imposes certain delivery requirements on all Retail RIAs with respect to their current Form CRS. Among these, Rule 204-5(b)(3) 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 post their current Form CRS on their website was June 30, 2020. See Rules 204-5(b)(3) & (e)(2); Form CRS Adopting Release at 239, 406-407; Form ADV, Part 3: Instructions to Form CRS, General Instruction 7.C (Sept. 2019).

19. McGowan was responsible for ensuring that the Form CRS was filed with the Commission and delivered to Two Point’s clients on time. Two Point failed to comply with these Requirements by the regulatory deadline. Although Two Point attempted to file Form CRS before the June 30, 2020 deadline, it was unsuccessful in doing so. Two Point began complying only after the Division of Examinations conducted a review of the firm. Two Point filed its Form CRS on March 30, 2021, nine months after the June 30, 2020 deadline, and did not post the form in the required format on its website until May 5, 2021.

Violations

20. As a result of the conduct described above in paragraphs 6 to 11, Two Point willfully³ violated Section 206(4) of the Advisers Act and Rule 206(4)-7(a) and (b) thereunder, which, among other things, require that an investment adviser that is registered or required to be registered: (1) adopt and implement written policies and procedures reasonably designed to prevent violations, by the investment adviser or its supervised persons, of the Advisers Act and the rules adopted thereunder; and (2) review, no less frequently than annually, the adequacy of its policies and procedures and the effectiveness of their implementation. A violation of Section 206(4) and the rules thereunder does not require scienter. SEC v. Steadman, 967 F.2d 636, 647 (D.C. Cir. 1992).

21. As a result of the conduct described above in paragraphs 12 to 15, Two Point willfully violated Section 204A of the Advisers Act and Rule 204A-1 thereunder, which require investment advisers that are registered or required to be registered to establish, maintain, and enforce a written code of ethics that meets the minimum standards set forth in Rule 204A-1.

22. As a result of the conduct described above in paragraphs 16 to 19, Two Point willfully violated Section 204 of the Advisers Act and Rules 204-1 and 204-5 thereunder.

23. As a result of the conduct described in paragraphs 6 to 19, McGowan caused Two Point’s violations of Sections 204, 204A, and 206(4) of the Advisers Act and Rules 204A-1, 204-1, 204-5, and 206(4)-7 thereunder.

Two Point’s Remedial Efforts

24. In determining to accept the Offers, the Commission considered remedial acts undertaken by Two Point and McGowan. In 2021, Two Point hired a new CCO who has been tasked with continuing to expand and improve the firm’s compliance program. Two Point also in 2021 retained a third-party compliance consulting firm to advise on its overall compliance program and its policies and procedures for complying with Rule 204A-1, and, per written representation by

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).

Respondents' counsel, will retain the same third-party compliance consulting firm or a similarly qualified firm through at least December 31, 2024.

25. In addition, Two Point has revised its written compliance policies and procedures and written Code of Ethics.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents Two Point's and McGowan's Offers of Settlement.

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

A. Two Point cease and desist from committing or causing any violations and any future violations of Sections 204, 204A, and 206(4) of the Advisers Act and Rules 204A-1, 204-1, 204-5, and 206(4)-7 thereunder.

B. McGowan cease and desist from committing or causing any violations and any future violations of Sections 204, 204A, and 206(4) of the Advisers Act and Rules 204A-1, 204-1, 204-5, and 206(4)-7 thereunder.

C. Two Point is censured.

D. Two Point shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$75,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury in accordance with 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 the manner provided in Subsection F below.

E. McGowan 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 in accordance with 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 the manner provided in Subsection F below.

F. Payment of any amount herein must be made in one of the following ways:

- 1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- 2) Respondents 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) Respondents 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 the respective Respondent making the payment (either Two Point and/or McGowan) 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, Assistant Regional Director, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004, or such other address the Commission staff may provide.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent McGowan, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by McGowan under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by McGowan of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary