UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6411 / September 11, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21643

In the Matter of **MRA ADVISORY GROUP,** **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 MRA Advisory Group ("MRA" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent 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[1] that:

Summary

1. This matter involves failures by MRA, a registered investment adviser, to comply with amendments to Advisers Act Rule 206(4)-1 that the Commission adopted in December 2020 (the "Amended Marketing Rule"). After November 1, 2022, the date MRA elected to begin complying with the Amended Marketing Rule (the "Relevant Period"), MRA advertised hypothetical performance on its public website without adopting and implementing policies and procedures reasonably designed to ensure that the hypothetical performance was relevant to the likely financial situation and investment objectives of the intended audience. As a result, MRA violated Section 206(4) of the Advisers Act and Rule 206(4)-1(d) thereunder. In addition, MRA failed to maintain copies of each advertisement that it disseminated in contravention of Section 204(a) of the Advisers Act and Rule 204-2(a)(11) thereunder.

Respondent

2. Respondent MRA is a Delaware limited liability company with its principal place of business in Parsippany, New Jersey. MRA has been registered with the Commission as an investment adviser since May 16, 2017. In its Form ADV dated February 23, 2023, MRA reported that it had approximately $213 million in regulatory assets under management.

Facts

3. On December 22, 2020, the Commission adopted significant amendments to Advisers Act Rule 206(4)-1, which governs marketing by Commission-registered investment advisers. *See Investment Adviser Marketing*, Release No. IA-5653 (Dec. 22, 2020) (effective May 4, 2021) ("Adopting Release"). The Commission set a deadline of November 4, 2022, eighteen months after the amendments' effective date of May 4, 2021, for registered investment advisers to come into compliance with the Amended Marketing Rule. *See id.* at 252.

4. Under the Amended Marketing Rule, registered investment advisers are prohibited from including any hypothetical performance in their advertisements unless, among other things, the adviser "[a]dopts and implements policies and procedures reasonably designed to ensure that the performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement." *See* Advisers Act Rule 206(4)-1(d)(6)(i).

[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.

5. In adopting this requirement, the Commission observed that:

> We believe that advisers generally would not be able to include hypothetical performance in advertisements directed to a mass audience or intended for general circulation. In that case, because the advertisement would be available to mass audiences, an adviser generally could not form any expectations about their financial situation or investment objectives.

Adopting Release at 220.

6. The Amended Marketing Rule defines an "advertisement," in pertinent part, to include "[a]ny direct or indirect communication an investment adviser makes … to one or more persons if the communication includes hypothetical performance, that offers the investment adviser's investment advisory services with regard to securities to prospective clients … or offers new investment advisory services with regard to securities to current clients." Advisers Act Rule 206(4)-1(e)(1). "Hypothetical performance" is defined as "performance results that were not actually achieved by any portfolio of the investment adviser" and includes, but is not limited to:

- Performance derived from model portfolios;
- Performance that is backtested by the application of a strategy to data from prior time periods when the strategy was not actually used during those time periods; and
- Targeted or projected performance returns with respect to any portfolio or to the investment advisory services with regard to securities offered in the advertisement.

See Advisers Act Rule 206(4)-1(e)(8).

7. During the Relevant Period, MRA published communications on its public website at https://wealthbuilder.mraadvisory.com that constituted "advertisements" because they offered MRA's investment advisory services with regard to securities to prospective clients and offered new investment advisory services with regard to securities to current clients. The advertisements included hypothetical performance that consisted of performance derived from model portfolios. The advertisements on the website were disseminated to the general public rather than to a particular intended audience.

8. While advertising hypothetical performance during the Relevant Period, MRA failed to adopt and implement policies and procedures reasonably designed to ensure that the performance was relevant to the likely financial situation and investment objectives of the intended audience. As a result of these failures, MRA disseminated hypothetical performance in advertisements to a mass audience rather than presenting hypothetical performance relevant to the likely financial situation and investment objectives of the intended audience.

9. Additionally, Section 204(a) of the Advisers Act and Rule 204-2 thereunder require registered investment advisers to keep certain "true, accurate, and current" books and records. Rule 204-2(a)(11) requires such advisers to keep a "copy of each" advertisement that the investment adviser disseminates, directly or indirectly. During the Commission's investigation, the staff

requested that MRA produce a copy of each advertisement reflecting performance that it disseminated during the Relevant Period. MRA was unable to do so because it had failed to ensure that the advertisements had been archived by an outside service provider.

Violations

10. As a result of the conduct described above, MRA willfully[2] violated Sections 204(a) and 206(4) of the Advisers Act and Rules 204-2(a)(11) and 206(4)-1(d) thereunder.

Undertakings

11. Respondent has undertaken to:

a. Within 30 days of the entry of this Order, to the extent Respondent plans to disseminate advertisements that contain hypothetical performance, evaluate, update, and review for the effectiveness of their implementation, Respondent's policies and procedures concerning advertisements that include hypothetical performance to ensure that Respondent's policies and procedures are reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement.

b. Within 40 days of the entry of this Order, certify, in writing, compliance with the undertakings ordered pursuant to Section IV.C. below. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The certification and supporting material shall be submitted to Brianna Ripa, Assistant Director, Asset Management Unit, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, or such other address as the Commission may provide, 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.

c. For good cause shown, the Commission staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be

[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).

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 MRA'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 204(a) and 206(4) of the Advisers Act and Rules 204-2 and 206(4)-1 thereunder.

B. Respondent is censured.

C. Respondent shall comply with the undertakings enumerated in Section III, paragraphs 11.a and 11.b above.

D. Respondent shall pay a civil money penalty in the amount of $85,000 to the Commission for transfer to the general fund of the United States Treasury, subject to the Securities Exchange Act of 1934 Section 21F(g)(3). Payment shall be made in the following installments: within 10 days of the entry of this Order, Respondent shall pay $25,000 of the civil penalty amount; thereafter, Respondent shall pay three additional installments of $20,000 each with the first additional installment to be paid within 120 days of the entry of this Order, the second additional installment to be paid within 240 days of the entry of this Order, and the third additional installment to be paid within 360 days of the entry of this Order, plus all accrued interest. Payments shall be applied first to post-order interest, which accrues pursuant to 31. U.S.C. §3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission. 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
Account 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 MRA as a Respondent in these proceedings, and the file number of the proceedings; a copy of the cover letter and check or money order must be sent to Brianna Ripa, Assistant Director, Asset Management Unit, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, or such other address as the Commission staff may provide.

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.

By the Commission.

Vanessa A. Countryman
Secretary