

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6413 / September 11, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21646

In the Matter of

**MORTGAGE INDUSTRY ADVISORY
CORPORATION,**

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 Mortgage Industry Advisory Corporation (“MIAC” 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 the Respondent's Offer, the Commission finds¹:

Summary

1. These proceedings concern MIAC's, a registered investment adviser's, failure (1) to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules adopted thereunder; (2) to conduct annual reviews of its compliance program; and (3) to establish, maintain, and enforce a written code of ethics. Despite MIAC having received notice of these deficiencies during a prior examination by the Commission's Division of Examinations in 2006, MIAC failed to adequately address these failures until 2022, after a subsequent examination in 2021 by the Commission's Division of Examinations raised these issues again. As a result of this conduct, MIAC willfully² violated Sections 204A and 206(4) of the Advisers Act and Rules 204A-1 and 206(4)-7 thereunder.

Respondent

2. MIAC is a Minnesota corporation with its principal place of business in New York, New York. MIAC has been registered with the Commission as an investment adviser since 2002, when it registered under its prior name Servicing.com. According to its Form ADV filed March 30, 2023, MIAC has approximately \$1.195 billion of regulatory assets under management. MIAC's clients generally consist of regulated depositories, mortgage originators, government entities, federal home loan banks, and real estate investment trusts. MIAC's investment advisory services consist of providing risk management and hedging advice to mortgage originators and holders. MIAC presently employs approximately 90 individuals, eight of whom perform investment advisory functions.

Background

Failure to Adopt and Implement Reasonably Designed Compliance Policies and Procedures

3. 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.

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.

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).

4. From at least 2006 until 2022, MIAC failed to adopt written compliance policies and procedures reasonably designed to prevent violations by the adviser and its supervised persons of the Advisers Act and the rules adopted thereunder.

5. While MIAC maintained an employee handbook (“Employee Handbook”), the Employee Handbook was not a compliance manual for MIAC’s obligations under the Advisers Act and the rules thereunder, but rather, as the document itself stated, was designed, among other things, to “describe some of the employee guidelines and to outline the policies, programs, and benefits available to eligible employees.” Accordingly, while the Employee Handbook, as noted in paragraph 13 below, included a section that described insider trading generally, the Employee Handbook primarily addressed general human resources issues, including unexcused absences, sexual harassment, and dress codes. The Employee Handbook did not include any specific mention of the Advisers Act or the rules adopted thereunder.

6. In 2006, the Division of Examinations (then the Office of Compliance Inspections and Examinations) conducted an examination of MIAC during which it requested MIAC provide a copy of its policies and procedures adopted and implemented pursuant to Rule 206(4)-7 of the Advisers Act. MIAC provided the staff a copy of the Employee Handbook. At the conclusion of the examination, the Division of Examinations issued MIAC a letter finding that MIAC’s Employee Handbook was “primarily geared to internal human resources policies and that it does not appear to have been designed to prevent MIAC’s employees from violating the relevant federal securities laws.” The letter instructed MIAC that it should adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and the rules adopted thereunder and review those policies and procedures annually for their adequacy and the effectiveness of their implementation. The letter further requested that MIAC provide the staff a copy of the policies and procedures it adopted. MIAC subsequently provided a document containing a Code of Ethics and Standards of Professional Conduct to the Division of Examinations staff and represented it would be integrated into its Employee Handbook. However, by 2008, the Code of Ethics and Standards of Professional Conduct no longer appeared in the Employee Handbook and no other written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder had been adopted.

7. Additionally, while MIAC maintained written internal controls concerning its business operations to guide its employees in their day-to-day business functions, these also were not policies and procedures reasonably designed to prevent violations by the adviser and its supervised persons of the Advisers Act and the rules adopted thereunder. Among other things, the controls instructed MIAC’s employees on how to use its internal IT systems to review clients’ profits and losses and interest rate exposure, and to determine when to effect certain hedge transactions on behalf of MIAC’s clients. Other controls concerned authorization and password requirements for accessing client data, steps for quality assurance employees to test MIAC’s IT systems for accuracy, and steps for MIAC’s analysts to confirm for accuracy the data inputs used in MIAC’s valuations. These written controls were designed to ensure that client assets were protected and that hedges were constantly monitored; however, the policies did not address, among other items, any potential conflicts of interest between MIAC and its clients, the personal securities holdings and transactions of MIAC’s access persons, the accuracy of MIAC’s disclosures to clients

and regulators, and the accurate creation and maintenance of records, including MIAC's policies and procedures with respect to its supervised persons' use of electronic communications methods.

8. During the Division of Examinations' 2021 examination of MIAC, the Division of Examinations again identified MIAC's lack of written policies and procedures reasonably designed to prevent violations of the Advisers Act. In 2022, MIAC retained a compliance consultant and adopted and implemented new written compliance policies and procedures and also conducted compliance training for those policies and procedures.

Failure to Conduct Annual Reviews

9. Under Section 206(4) of the Advisers Act and Rule 206(4)-7(b) thereunder, an investment adviser that is registered or required to be registered 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.

10. From at least 2006 until 2022, MIAC failed to conduct annual reviews of the adequacy of an investment advisory compliance program or the effectiveness of its implementation. While MIAC, as of 2001 and continuing through the present, engaged an accounting firm to annually review the suitability of the design and operating effectiveness of MIAC's controls described in paragraph 7 above and to issue a System of Organizational Controls 1 ("SOC 1") report, the accounting firm was not retained to review whether MIAC maintained compliance policies and procedures pursuant to Rule 206(4)-7 nor to review the effectiveness of such policies, if established.

11. After the Division of Examinations' 2021 examination of MIAC, during which the Division noted MIAC's lack of annual compliance reviews, in 2022, MIAC began conducting annual compliance reviews.

Failure to Establish, Maintain, and Enforce a Written Code of Ethics

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 include a standard (or standards) of business conduct that the investment adviser requires of its supervised persons, which standard must reflect the investment adviser's fiduciary obligations and those of its supervised persons. Rule 204A-1 also 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 Chief Compliance Officer. The code of ethics must also require 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. While the Employee Handbook included a section that described insider trading generally (and informed employees that they would be subject to disciplinary action if they engaged in insider trading), it did not set out compliance policies and procedures regarding insider trading or address the requirements of Rule 204A-1, including those concerning personal securities

transactions and holdings and compliance with the federal securities laws more generally. After its 2006 examination, the Division of Examinations informed MIAC that it had failed to establish a written code of ethics and requested MIAC provide the staff a copy of the code MIAC intended to adopt. MIAC subsequently provided the Code of Ethics and Standards of Professional Conduct referenced above to the Division of Examinations staff and represented it would be integrated into its Employee Handbook. However, as discussed above, by 2008, the Code of Ethics and Standards of Professional Conduct no longer appeared in the Employee Handbook and no other Code of Ethics had been adopted.

14. After the Division of Examinations' 2021 examination of MIAC, during which the Division again noted MIAC's lack of written Code of Ethics, in 2022, MIAC adopted a written Code of Ethics containing the provisions required by Rule 204A-1.

Violations

15. As a result of the conduct described above, MIAC willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 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).

16. As a result of the conduct described above, MIAC 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.

MIAC's Remedial Efforts

17. In determining to accept the Offer, the Commission considered remedial acts undertaken by MIAC. In addition to the actions described above, in 2022, MIAC hired a new Chief Compliance Officer who has been tasked with improving MIAC's compliance program and retained a third-party compliance consulting firm to advise on its overall compliance program and its policies and procedures.

IV.

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

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

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

B. MIAC is censured.

C. MIAC shall pay a civil money penalty of \$100,000 to the Securities and Exchange Commission. Payment of the penalty shall be made in the following installments: (i) \$40,000 due within 10 days of the entry of the Order; (ii) \$40,000 due within 240 days of the Order; (iii) any remaining amount outstanding due within 360 days of the entry of the Order. Payments shall be applied first to post order interest, which accrues pursuant to SEC Rule of Practice 600 and/or 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.

Payment of any amount herein 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 MIAC 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 Kimberly Frederick, Assistant Regional Director, Denver Regional Office, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294, or such other address the Commission staff may provide.

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