

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 100183 / May 20, 2024**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 6608 / May 20, 2024**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21943**

**In the Matter of**

**Raymond Lawrence Lent (dba  
The Putney Financial Group,  
Registered Investment  
Advisors),**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTION 15(b) OF THE  
SECURITIES EXCHANGE ACT OF 1934  
AND 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 Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Raymond Lawrence Lent (dba The Putney Financial Group, Registered Investment Advisors) (“Putney” 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, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and 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<sup>1</sup> that:

#### Summary

1. These proceedings arise out of breaches of fiduciary duties by former registered investment adviser Putney, an unincorporated sole-proprietorship of Raymond Lawrence Lent (“Lent”), in connection with the receipt of third-party compensation by Putney’s affiliated broker, and Lent in his capacity as an owner and a registered representative of that broker, in the form of both revenue sharing and sales commissions from advisory client investments, without fully and fairly disclosing the related conflicts of interest.

2. At times during the period from at least April 2016 through October 1, 2021 (the “Relevant Variable Annuity Period”), Putney recommended to its advisory clients variable annuity investments sponsored by insurance companies that paid upfront sales commissions to Portsmouth Financial Services (“Portsmouth”), Putney’s affiliated broker, and to Lent in his capacity as a registered representative of Portsmouth. The insurance companies that sponsored these variable annuities charged ongoing asset-based fees to contract holders in these variable annuities that included, in part, fees to cover the cost of paying upfront sales commissions.

3. During the Relevant Variable Annuity Period, each insurance company for the majority of the variable annuities that Putney recommended to its advisory clients also issued a variable annuity with the same features, typically made available to clients of investment advisers who charged advisory fees, but did not pay sales commissions and had lower ongoing fees. Putney consistently recommended to its advisory clients the variable annuity products that paid Portsmouth commissions and did not fully and fairly disclose its financial conflict of interest in recommending those variable annuities to its clients. Putney also breached its duty of care to its advisory clients by failing to undertake any analysis as to whether a fee-based variable annuity contract was in its advisory clients’ best interest.

4. In addition, from at least April 2016 through April 2021 (the “Relevant Cash Sweep Period”), Putney selected for its advisory clients cash sweep money market funds for which Portsmouth received revenue sharing payments. The money market funds that resulted in Portsmouth receiving revenue sharing were more expensive than lower-cost funds in the same category that were available to clients through the clearing broker. While Putney did not disclose the revenue sharing payments at all from at least April 2016 through August 2019, in September

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<sup>1</sup> 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.

2019, following an examination by staff of the Commission, Putney disclosed to its advisory clients that its affiliated broker was receiving revenue sharing payments, and that this created a conflict of interest. Despite eventually disclosing the conflict regarding revenue sharing payments, Putney did not disclose to advisory clients the availability of lower-fee cash sweep money market funds in the same category with higher yields that did not pay revenue sharing. Putney also failed to satisfy its duty of care when it failed to perform any analysis to determine whether lower-fee money market funds were available and in the best interest of its clients when selecting cash sweep money market funds to its advisory clients. In approximately April 2021, Putney began sweeping its advisory clients' cash into lower-cost money market funds that did not pay revenue sharing.

5. Putney also failed to adopt and implement written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its variable annuity and cash sweep money market selection practices and its disclosures of conflicts of interest resulting from those practices and its affiliated broker's receipt of revenue sharing.

### **Respondent**

6. Raymond Lawrence Lent (dba The Putney Financial Group, Registered Investment Advisors) was an investment adviser operating as a California sole proprietorship with its principal place of business in San Rafael, California. Putney was registered with the Commission as an investment adviser from January 2004 until December 2022, when it changed its legal and primary business name and form of organization to The Putney Financial Group LLC, a single-member limited liability company (File No. 801-62638). According to its Form ADV, filed in December 2022, The Putney Financial Group LLC ("Putney LLC") is the successor to the business of Putney's registered investment adviser, and continues to provide investment advisory services to its clients. Lent, 71, of San Rafael, CA, served as the sole proprietor and Principal of Putney, and now serves as the Managing Member of Putney LLC. Putney provided, and Putney LLC continues to provide, investment advisory services to retail investors, including individual portfolio management, on both a discretionary and non-discretionary basis, as well as financial planning. Putney was an affiliate of Portsmouth, a FINRA registered broker-dealer. Putney LLC is wholly owned by Lent and Lent controls 100% of the company. Putney LLC remains an affiliate of Portsmouth. In its Form ADV dated March 28, 2024, Putney LLC reported that it had approximately \$177 million in regulatory assets under management.

### **Other Relevant Entity**

7. Portsmouth Financial Services is a California corporation with its principal place of business in San Francisco, California. Portsmouth has been registered with the Commission as a broker-dealer since August 1983 (CRD No. 13980). Lent is a co-owner of Portsmouth and has been Chairman of the Board of Portsmouth since approximately 2013. Lent is separately licensed as a registered representative of Portsmouth.

### **Commission- and Fee-Based Variable Annuities**

8. Variable annuities are long-term investments with an insurance component. The insurance component provides the ability to convert contract value into a stream of income (or annuity) payments, may provide a death benefit that exceeds the contract value for the owner's beneficiaries, and may offer other benefits. Each variable annuity contract includes subaccounts that have investment strategies similar to retail mutual funds. Variable annuity issuers charge fees that include annual mortality, expense, and administrative fees ("ME&A fees"). The ME&A fees compensate the insurance company for insurance risks and other costs it assumes under the variable annuity contract and are deducted from the value of the investment subaccounts within the variable annuity.

9. Some variable annuities are structured to pay an upfront commission to a broker-dealer at the time of the sale, paying the registered representative of the broker-dealer a portion of that commission ("commission-based" variable annuities). Other variable annuities, typically offered for use in advisory accounts, do not pay sales commissions, and the investment adviser instead charges an advisory fee as it does on other assets under management ("fee-based" variable annuities). To compensate the insurance company for paying an upfront commission to the broker, investors in commission-based variable annuities will pay higher ongoing ME&A fees, often for the life of the contract, on commission-based annuities than they would on fee-based variable annuities that do not pay a sales commission.

10. Insurance companies also generally charge "surrender" fees on commission-based variable annuities when an investor withdraws an amount in excess of the annual penalty-free maximum from the variable annuity within a certain period of time after purchase of the variable annuity (the "surrender period"). Because fee-based annuity contracts sold by investment advisers do not pay upfront commissions, they typically do not charge surrender fees, allowing the investor to exchange the contract or redeem it, in whole or in part, without these fees.

### ***Putney's Sale of Commission-Based Annuities***

11. During the Relevant Variable Annuity Period, Putney recommended that its advisory clients purchase commission-based variable annuities in their advisory accounts. The issuing insurance companies paid Portsmouth, Putney's affiliated broker, an upfront commission that was, on average, 6.8% of the total invested in each of these variable annuity contracts. Portsmouth, in turn, paid Lent, in his capacity as a registered representative of Portsmouth, approximately 92% of that upfront commission. In many instances, there were fee-based variable annuities with the same features offered by the same issuing insurance companies available to Putney's advisory clients that did not pay sales commissions and had lower ongoing ME&A fees.

12. Putney waived its advisory fee on the commission-based variable annuities purchased through Portsmouth for the first 12 months after a purchase. If clients elected, at the time of purchase, to have Putney continue to manage those assets after the first 12 months, it then charged those clients an ongoing advisory fee on the underlying assets of the commission-based

variable annuities. The advisory fee Putney charged on commission-based variable annuities was capped at 1 percent, while, in accordance with an asset-based fee schedule, Putney charged fees that could exceed 1 percent on investments that did not pay commissions. Nevertheless, many of Putney's clients still paid more for the commission-based variable annuity contracts than they would have paid had they purchased a fee-based variable annuity with the same features issued by the same insurance company because these clients paid higher ongoing ME&A fees from the date of purchase.

### **Revenue From Cash Sweep Money Market Funds**

13. A cash sweep account is a money market mutual fund or bank account used by brokerages to hold uninvested cash until the investor or adviser decides how to invest the money. A money market fund is a type of mutual fund registered under the Investment Company Act of 1940 and regulated pursuant to Rule 2a-7 under that Act. Money market funds generally invest in short-term, highly liquid securities with limited credit risk, and are frequently used as cash sweep account options. Since at least 2016, Putney selected for its advisory clients certain money market funds to hold uninvested cash.

14. Portsmouth's agreement with its clearing broker provided for the clearing broker to share with Portsmouth a portion of the revenue the clearing broker received in connection with certain money market funds selected for cash sweep accounts. Under this arrangement, the clearing broker offered two different types of money market mutual funds for Putney to sweep its clients' cash: (1) certain money market funds that, pursuant to Portsmouth's clearing agreement with the clearing broker, would result in "distribution assistance" or revenue sharing payments from the clearing broker to Portsmouth based on the amount of Putney's clients' investments in these money market funds; or (2) money market funds that had lower costs and did not result in the clearing broker paying revenue sharing to Portsmouth. During the Relevant Cash Sweep Period, Putney selected money market funds that paid revenue sharing to Portsmouth.

15. Putney had a conflict of interest when it selected these cash sweep money market funds to its advisory clients. The money market funds available on the clearing broker's platform wherein Portsmouth received revenue sharing also generally charged higher fees and had at times returned lower investment yields to Putney's clients. Conversely, the money market funds available on the clearing broker's platform that paid no or lower revenue sharing generally charged lower fees and had at times returned higher investment yields.

16. From at least April 2016 through March 2021, Putney routinely selected cash sweep money market funds that resulted in Portsmouth's receipt of revenue sharing rather than those that did not. When Putney selected these funds for its advisory clients, Putney had an incentive to select cash sweep products that paid revenue sharing to Portsmouth, its affiliated broker. In approximately April 2021, Putney transitioned its advisory clients to money market funds that do not pay revenue sharing to Portsmouth.

## Disclosures Failures

17. From March 2016 through February 2019, Putney disclosed in Part 2A to its Forms ADV that Lent and other firm associates, in their capacity as registered representatives of Portsmouth, “can receive compensation” from Portsmouth for the sale of investment products, such as variable annuities. During that period, Portsmouth (and Lent, as an owner of Portsmouth) in fact received fees that it would not have collected had Putney’s advisory clients been invested in the available fee-based annuities issued by the same insurance companies with the same features. Portsmouth, in turn, paid to Lent, as a registered representative of Portsmouth, 92% of those commissions. During this period, Putney did not disclose that its affiliate, Portsmouth, did, in fact, receive such commissions or that these commissions created a conflict of interest.

18. In September 2019, Putney revised its Form ADV Part 2A and disclosed that Portsmouth received commissions on the sale of variable annuities, and that Lent would also receive commissions in his capacity as a registered representative of Portsmouth. Putney also disclosed that that commission arrangement presented a conflict of interest. Putney did not disclose that, for certain variable annuities, there were lower cost fee-based variable annuities issued by the same insurance companies with the same features available that did not pay its affiliated broker a commission.

19. In addition, from at least 2016 until September 2019, Putney did not disclose Portsmouth’s receipt of revenue sharing from cash sweep products in which Putney had invested its clients’ assets, or otherwise put clients on notice regarding the conflicts of interest inherent in this arrangement.

20. In September 2019, following an examination by the Commission’s staff, Putney updated its Form ADV Part 2A to disclose Portsmouth’s receipt of revenue sharing and associated conflicts of interest with respect to cash sweep money market funds:

*It is Firm policy to select the money market fund that pays the highest amount of interest to the client given the minimum investment required. At times, this selection results in Portsmouth receiving greater compensation than what it would receive from a money market fund offering a lower interest rate to the client.*

These representations were false because Putney did not select the cash sweep money market funds that paid the highest amount of interest for which its clients were eligible. The disclosure was also misleading because it implies that there was a higher minimum investment required to qualify for cash sweep money market funds that paid more interest. Putney’s clients were eligible for cash sweep money market funds with lower expense ratios (charging lower fees) and with higher yields (generating more income). The funds in which Putney instead invested these clients charged higher fees and paid more to Portsmouth, and often paid less interest to Putney’s clients.

### **Duty of Care Failures**

21. An investment adviser's fiduciary duty includes a duty of care, which requires an adviser to provide investment advice in the best interest of its client, based on the client's objectives.

22. Since at least April 2016, Putney advised clients to purchase variable annuities that generated sales commissions, including when lower-cost fee-based annuities from the same issuers were available that had the same features but did not pay commissions. Putney did not undertake any analysis as to whether it would have been in its individual clients' best interest to invest in a fee-based variable annuity contract. As a result, during the Relevant Variable Annuity Period, Putney failed to provide advice in the best interest of its advisory clients.

23. In addition, during the Relevant Cash Sweep Period, Putney determined that government and prime money market funds were appropriate cash vehicles for its advisory clients. Putney, however, failed to consider alternative, lower-fee government and prime money market funds offered by the clearing broker when selecting particular funds.

### **Compliance Deficiencies**

24. During the Relevant Variable Annuity Period and Relevant Cash Sweep Period, Putney failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with: disclosing conflicts of interest presented by its variable annuity and cash sweep money market fund selection practices, making recommendations of variable annuities and selections of money market funds that were in the best interests of its of its advisory clients, and receiving compensation on variable annuities and money market funds.

### **Violations**

25. As a result of the conduct described above, Putney willfully<sup>2</sup> 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

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<sup>2</sup> "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act and 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).

deceit upon any client or prospective client.” Scierter 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)).

26. As a result of the conduct described above, Putney 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.

### **Disgorgement**

27. The disgorgement and prejudgment interest ordered in Section IV.C is consistent with equitable principles and does not exceed Putney’s net profits from its violations, and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid pursuant to Section IV.C in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Exchange Act.

### **Undertakings**

28. Respondent has undertaken to:

a. Within 30 days of the entry of this Order, review and correct as necessary all relevant disclosure documents concerning sweep account revenue sharing, variable annuity selection, and sales commissions, including the availability of lower-cost alternatives that do not pay sales commissions, for any registered investment adviser for which Lent is the owner or control person.

b. Within 60 days of the entry of this Order, evaluate whether existing clients for any registered investment adviser for which Lent is the owner or control person should be moved into lower-cost annuity products or cash sweep money market funds and move clients as necessary.

c. Within 30 days of the entry of this Order, evaluate, update (if necessary), and review for the effectiveness of their implementation, written policies and procedures for any registered investment adviser for which Lent is the owner or control person, so that they are reasonably designed to prevent the aforementioned violations of the Advisers Act.

d. Within 45 days of the entry of this Order, notify affected investors (*i.e.*, those former and current clients who were financially harmed during the Relevant



Period by the practices detailed above (hereinafter, “affected investors”) of the settlement terms of this Order by sending a copy of this Order to each affected investor 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.

e. Within 75 days of the entry of this Order, certify, in writing, compliance with the undertaking(s) set forth above. 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 Jeremy E. Pendrey, Assistant Regional Director, Asset Management Unit, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104, or such other address as the Commission staff 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.

f. 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 Section 15(b) of the Exchange Act and 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 pay disgorgement of \$707,129.58, prejudgment interest of \$183,236.60, and civil penalties of \$175,000, to the Securities and Exchange Commission. Payment shall be made in the following installments: (1) due within ten [10] days of the entry of this Order, \$890,366.18; (2) due within one hundred and eighty [180] days of the entry of this Order, \$175,000. 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 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 Raymond Lawrence Lent (dba The Putney Financial Group, Registered Investment Advisors), as a Putney 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 E. Pendrey, Assistant Regional Director, Asset Management Unit, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104, or such other address as the Commission staff may provide.

D. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for penalties ordered in this proceeding, 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, Respondent shall not argue that Respondent is entitled to, nor shall Respondent 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 Respondent 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 Section III, paragraph 28 above.

**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, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent 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 Respondent 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