

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6803 / December 20, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22379

In the Matter of

**ATLAS FINANCIAL
ADVISORS, 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 Atlas Financial Advisors, Inc. (“Atlas” 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 Respondent's Offer, the Commission finds¹ that:

Summary

1. This matter involves violations of the Advisers Act by Atlas, a registered investment adviser, including Atlas' failure to comply with amendments to Advisers Act Rule 206(4)-1 that the Commission adopted in December 2020 (the "Marketing Rule"). Specifically, following the November 4, 2022 compliance deadline for the Marketing Rule, Atlas made false and misleading claims about its investment strategies and their performance, failed to present net performance information alongside gross performance, was unable to substantiate performance claims upon demand by the Commission, and advertised hypothetical performance on its public website without adopting and implementing required policies and procedures. Atlas also violated Advisers Act Rule 204-2(a)(16) by not maintaining books and records sufficient to demonstrate the calculation of the performance information in its advertisements, and Atlas violated Advisers Act Rule 206(4)-7 by failing to implement certain of its compliance policies and procedures.

Respondent

2. **Atlas Financial Advisors, Inc.** is a California corporation with its principal place of business in Oroville, California. Atlas has been registered with the Commission as an investment adviser since April 2021. Atlas is an investment adviser to retail clients. In its Form ADV filed on March 14, 2024, Atlas reported that it had approximately \$106 million in regulatory assets under management.

Facts

Marketing Rule Failures

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). The Commission set a deadline of November 4, 2022 (the "Compliance Date"), eighteen months after the amendments' effective date of May 4, 2021, for registered investment advisers to come into compliance with the Marketing Rule. *See id.* at 252.

4. Among other things, the Marketing Rule states that it is unlawful for registered investment advisers, directly or indirectly, to disseminate any advertisement² that includes:

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 The Marketing Rule defines an "advertisement," in pertinent part, to include "[a]ny direct or indirect communication an investment adviser makes to more than one person, or to one or more persons if the communication includes hypothetical performance, that offers the investment adviser's investment

- any untrue statement of a material fact, or omits to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading, *see* Advisers Act Rule 206(4)-1(a)(1);
- any material statement of fact that the adviser does not have a reasonable basis for believing it will be able to substantiate upon demand by the Commission, *see* Advisers Act Rule 206(4)-1(a)(2);
- any presentation of gross performance, unless the advertisement also presents net performance: (i) with at least equal prominence to, and in a format designed to facilitate comparison with, the gross performance; and (ii) calculated over the same time period, and using the same type of return and methodology, as the gross performance, *see* Advisers Act Rule 206(4)-1(d)(1); or
- any hypothetical performance, unless the registered investment adviser “(i) [a]dopts and implements policies and procedures 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; (ii) [p]rovides sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating such hypothetical performance; and (iii) [p]rovides . . . sufficient information to enable the intended audience to understand the risks and limitations of using such hypothetical performance in making investment decisions” *See* Advisers Act Rule 206(4)-1(d)(6). “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 that is “derived from model portfolios” or “backtested by the application of a strategy to data from prior time periods when the strategy was not actually used during those time periods.” *See* Advisers Act Rule 206(4)-1(e)(8)(i)(A)-(B).

5. Following the Compliance Date, Atlas disseminated material on its public websites that constituted advertisements and that contained false and misleading statements in violation of Rule 206(4)-1(a)(1). For example, Atlas’ public website advertised its “Portfolio Shield” investment strategies through statements and factsheets that presented hypothetical performance derived from model portfolios, much of which was backtested by applying the strategies to data from time periods prior to Portfolio Shield’s commencement in 2015. Atlas’ website claimed that this hypothetical performance was “verified by Morningstar,” “validated by Morningstar,” and that “[e]ach month Morningstar provides an updated Investment Detail Report on the Portfolio Shield Strategy.” In fact, Morningstar, Inc. never verified Atlas’ calculations nor provided reports on the strategies. Rather, an Atlas employee used a software tool offered by Morningstar to calculate the advertised hypothetical performance.

6. Atlas’ website and factsheets also attributed hypothetical performance to the Portfolio Shield strategies without disclosing that the performance was calculated from model

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).

portfolios that did not consistently follow the strategies' advertised investment formulas. Atlas advertised Portfolio Shield as "formula-based" strategies that involved potential investments in a discrete set of ETFs. However, when Atlas selected the model portfolios that it used to calculate the strategies' hypothetical performance, Atlas included investments in ETFs that were not disclosed as potential investments under the advertised strategies. As a result, most of the performance figures that Atlas attributed to Portfolio Shield in its post-Compliance Date advertisements were based on the performance of model portfolios that did not consistently follow the advertised strategies.

7. Atlas' advertisements contained other false and misleading statements. Atlas' website stated that the Portfolio Shield strategies "at all times" invested in ETFs that used a "systematic options overlay." In fact, at all times since the Compliance Date, the Portfolio Shield strategies did not use an options overlay or invest in any ETFs that used one. Atlas' website also stated that the investment advisor representative identified as the Portfolio Shield strategies' creator "also manages a long-only macro fund" and authors a report distributed to more than 7,500 subscribers every day. In fact, the representative did not manage any fund and the report had significantly fewer daily subscribers.

8. Further, Atlas made material statements of fact in advertisements without being able to substantiate those claims upon demand by the Commission in violation of Rule 206(4)-1(a)(2). Specifically, Atlas was not able to substantiate the claim on its website that "[b]ased on current and Morningstar back-tested returns, Portfolio Shield has outperformed the S&P 500 twelve out of the past fifteen years."

9. In addition, Atlas' public website, including nearly every fact sheet available on it, presented gross hypothetical performance without also presenting net hypothetical performance in violation of Rule 206(4)-1(d)(1).

10. Moreover, while advertising hypothetical performance after the Compliance Date, Atlas failed to adopt and implement 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 in violation of Rule 206(4)-1(d)(6)(i). As a result, Atlas disseminated hypothetical performance in its public website advertisements to a mass audience rather than presenting hypothetical performance relevant to the likely financial situation and investment objectives of the intended audience. *See Investment Adviser Marketing*, Release No. IA-5653 at 220 (Dec. 22, 2020) ("[A]dvisers generally would not be able to include hypothetical performance in advertisements directed to a mass audience or intended for general circulation . . . because the advertisement would be available to mass audiences, an adviser generally could not form any expectations about their financial situation or investment objectives."). Atlas' compliance manual also required it to include specific disclosures when presenting hypothetical performance in advertisements, yet Atlas failed to include the full set of prescribed disclosures.

Books and Records Failures

11. Atlas did not maintain records or documents necessary to form the basis for or demonstrate the calculation of the performance derived from model portfolios that was advertised on Atlas' public website, in violation of Rule 204-2(a)(16).

Compliance Failures

12. Atlas failed to implement certain compliance policies and procedures in its compliance manual, in violation of Rule 206(4)-7. Specifically, Atlas' compliance manual required that, when Atlas representatives traded in the same or similar securities that they recommended to clients, client business would always be transacted first. On multiple occasions, however, Atlas' investment advisor representatives traded shortly before client trades in the same security.

Violations

13. As a result of the conduct above, Respondent willfully violated Section 206(4) of the Advisers Act and Rules 206(4)-1(a) and 206(4)-1(d) thereunder.

14. As a result of the conduct described above, Respondent willfully violated Section 204 of the Advisers Act and Rule 204-2(a)(16) thereunder, which require registered investment advisers to make and keep records or documents necessary to form the basis for or demonstrate the calculation of any performance of any or all managed accounts, portfolios, or securities recommendations included in advertisements.

15. As a result of the conduct described above, Respondent 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.

Remedial Steps

16. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Atlas and the cooperation afforded the Commission staff.

Undertakings

17. Respondent has undertaken to:

a. Within 30 days of the entry of this Order, evaluate, update, and review for the effectiveness of their implementation, Respondent's policies and procedures concerning Atlas representative trading in the same or similar securities recommended to clients.

b. 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 Atlas' 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.

c. Within 45 days of the entry of this Order, review all its advertisements and confirm that the advertisements Atlas is presently disseminating comply with the requirements of the Marketing Rule.

d. Within 50 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 Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Colin D. Forbes, Assistant Director, Asset Management Unit, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, MA 02110, with a copy to the Office of Chief Counsel of the Enforcement Division.

e. 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 Atlas' 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 206(4) and 204 of the Advisers Act and Rules 206(4)-1, 206(4)-7, and 204-2 thereunder.

B. Respondent is censured.

C. Respondent shall comply with the undertakings enumerated in Section III, paragraphs 17.a through 17.d above.

D. Respondent shall pay a civil money penalty in the amount of \$175,000 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 \$75,000 of the civil penalty amount; thereafter, Respondent shall pay four additional installments of \$25,000 each with the

first additional installment to be paid within 90 days of the entry of this Order, the second additional installment to be paid within 180 days of the entry of this Order, the third additional installment to be paid within 270 days of the entry of this Order, and the fourth additional installment to be paid within 360 days of 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. 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 Atlas Financial Advisors, Inc. 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 Colin Forbes, Assistant Director, Asset Management Unit, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, MA 02110.

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