UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6901 / August 1, 2025

ADMINISTRATIVE PROCEEDING
File No. 3-22500

In the Matter of **Munakata Associates LLC** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Munakata Associates LLC ("Munakata" 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 Cease-and-Desist Proceedings Pursuant to Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

1. This proceeding arises out of the failure of registered investment adviser Munakata to comply with the independent verification requirement for client funds and securities over which it had custody from 2018 through 2024, in violation of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, commonly referred to as the "Custody Rule."

Respondent

2. Munakata is a New York limited liability company with its principal office and place of business in Rye, New York. Munakata has been registered with the Commission as an investment adviser since March 26, 2018. The firm holds over $64 million in regulatory assets under management from 11 clients as of its February 21, 2025, Form ADV.

Background

3. The Custody Rule is designed to protect investment advisory clients from, among other things, the loss, misuse, or misappropriation of their funds and securities. The Custody Rule provides that "it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the [Advisers] Act . . . for [a registered investment adviser] to have custody of client funds or securities unless" the adviser implements an enumerated set of requirements to prevent loss, misuse, or misappropriation of those funds and securities. *See* Rule 206(4)-2(a).

4. An investment adviser has custody if it holds, directly or indirectly, client funds or securities, or if it has the ability to obtain possession of those funds and securities. *See* Rule 206(4)-2(d)(2). Custody includes, among other things, "[a]ny arrangement . . . under which [the adviser is] authorized or permitted to withdraw client funds or securities maintained with a custodian upon [its] instruction to the custodian" and "[a]ny capacity (such as . . . trustee of a trust) that gives [the adviser or its] supervised person legal ownership of or access to client funds or securities." *Id.* A "related person" is defined as any person, directly or indirectly, controlling or controlled by the adviser, and any person that is under common control with the adviser. *See* Rule 206(4)-2(d)(7).

5. Under the Custody Rule, an investment adviser who has custody of client funds and securities must, among other things: (i) ensure that a qualified custodian maintains the client funds and securities; (ii) notify the client in writing of accounts opened by the adviser at a qualified custodian on the client's behalf; (iii) have a reasonable basis for believing that the qualified custodian sends account statements at least quarterly to clients; and (iv) ensure that client funds and securities are verified by actual examination each year by an independent public accountant pursuant to a written agreement at a time chosen by the accountant without prior notice or announcement to the adviser (i.e., the "surprise examination" requirement). *See* Rule 206(4)-2(a)(1) – (4). The written agreement with the accountant must provide for the first examination to occur within six months of becoming subject to the requirement and require, among other things, that the accountant file a Form ADV-E with the Commission within 120 days of the date chosen by the accountant to perform the examination, which states that the accountant has examined the client

funds and securities and describes the nature and extent of the examination. *See* Rule 206(4)-2(a)(4).

Munakata Violated the Custody Rule

6. From at least 2018 to 2024 (the "Relevant Period"), Munakata's President, who is the firm's sole principal and also serves as the firm's chief compliance officer ("Munakata's President"), served as a co-trustee of two trusts that were Munakata's advisory clients. The trust agreements granted each co-trustee "broad investment and other powers under the trust agreement and applicable law to enter into transactions and to trade, buy, sell, sell short or otherwise acquire, receive, deliver, assign, endorse for transfer, hold or dispose of all manner of securities, futures, currencies and commodities . . . ." as well as "broad powers under the trust agreements and applicable law to engage in borrowing and other loan and credit transactions . . . ." The agreements further stated that each co-trustee may act independently. Thereby, Respondent had access to and/or the ability to obtain possession of trust funds and securities without the consent of the respective co-trustees.

7. During the Relevant Period, Munakata's President also had signatory authority on four clients' accounts opened between 2017 and 2019 whereby he had the same ability to instruct the broker as to delivery of the accounts' funds and securities as did the beneficial owner of the account. Thereby, Respondent had access to and/or the ability to obtain possession of client funds and securities.

8. During the Relevant Period, Munakata's President acted as an authorized agent with power of attorney on five clients' accounts opened between 2017 and 2022 whereby he had "the power to place orders in an account, request disbursements and make inquiries concerning the account such as obtaining account balances" as well as the power "to make gifts or other transfers of . . . money or other property from [the client's] account during [the client's] lifetime, without restriction, to any one or more persons, *including the agent himself or herself*." (emphasis in original). Thereby, Respondent had access to and/or the ability to obtain possession of client funds and securities.

9. As a result, during the Relevant Period, Respondent had custody of client funds and securities under the Custody Rule. Accordingly, Respondent was required to obtain surprise examinations in accordance with Rule 206(4)-2(a)(4) during the Relevant Period. At no time during the Relevant Period, however, did Respondent arrange for the required surprise examinations for the client accounts.

Violations

10. As a result of the conduct described above, from at least 2018 to 2024, Respondent violated Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 203(k) of the Advisers Act, Respondent cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder.

B. Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $50,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to 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 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 Munakata Associates LLC 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 L. Pollock, Associate Regional Director, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

C. 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