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

**INVESTMENT ADVISERS ACT OF 1940**
**Release No. 6941/ January 20, 2026**

**ADMINISTRATIVE PROCEEDING**
**File No. 3-22580**

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| **In the Matter of**<br><br>**FAMILYWEALTH ADVISERS, LLC and FAMILYWEALTH ASSET MANAGEMENT, LLC**<br><br>**Respondents.** | **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 FamilyWealth Advisers, LLC ("FWA") and FamilyWealth Asset Management, LLC ("FWAM") (collectively "Respondents").

## II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") 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 them and the subject matter of these proceedings, which are admitted, Respondents consent 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 Respondents' Offers, the Commission finds[1] that:

### Summary

1. This matter arises out of registered investment advisers FWA and FWAM's violations concerning their use of hedge and assignment clauses in their investment advisory agreements and their violations of the custody rule. Specifically, from at least May 2019 through December 2024 (the "Relevant Period"), FWA and FWAM required advisory clients to sign investment advisory agreements that included liability disclaimer language, commonly referred to as a hedge clause, that contained misleading statements regarding the scope of each adviser's unwaivable fiduciary duty and could lead a client to believe, incorrectly, that the client had waived a non-waivable cause of action against the adviser provided by state or federal law. In addition, the agreements failed to provide, in substance, that no assignment of the advisory agreement may be made by the investment advisers without the consent of the advisory clients. To the contrary, the agreements improperly permitted assignment of the client advisory agreements without client consent. Additionally, during the Relevant Period, the advisory agreements provided Respondents with custody of client assets, yet Respondents failed to obtain verification by an independent public accountant of client funds and securities. Respondents also failed to implement policies and procedures that were reasonably designed to prevent violations of the Advisers Act and rules thereunder related to hedge and assignment clauses. As a result, Respondents' willfully violated Section 206(2), Section 205(a)(2), and Section 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 thereunder.

### Respondents

2. FamilyWealth Advisers, LLC ("FWA") is a limited liability company with its principal place of business in Lake Mary, Florida. FWA has been registered with the Commission as an investment adviser since August 28, 2017. FWA has previously operated under the names Advisersource.com, Family Wealth(TM) Advisers, and FamilyWealth Advisors, but has operated under the name FWA since January 31, 2019. FWA and FWAM are both 100% owned by the same parent corporation. In its Form ADV, dated March 31, 2025, FWA reported that as of December 31, 2024 it had $346,344,276 in regulatory assets under management.

3. FamilyWealth Asset Management, LLC ("FWAM") is a limited liability company with its principal place of business in Dallas, Texas. FWAM has been registered with the Commission as an investment adviser since January 2, 2009. FWAM has previously operated under the names SJP Capital Management, LLC, Austin Capital Asset Management, LLC, Austin Capital Management, LLC, but has operated under the name FWAM since approximately March 29, 2019. FWAM and FWA are both 100% owned by the same parent corporation. In its Form ADV, dated

[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

March 31, 2025, FWAM reported that as of December 31, 2024, it had $180,860,558 in regulatory assets under management.

## Background

4. In order to become an advisory client of Respondents, clients had to sign an advisory agreement. Most of FWA's and FWAM's clients are retail investors.

5. Although FWA and FWAM are separate investment advisers, both entities used the same advisory agreement with their respective clients.

6. During the Relevant Period, Respondents used at least three different versions of an advisory agreement for their advisory clients. The first agreement, titled "FamilyWealth Investment Advisory Agreement," referred to FWA and "any affiliates" and was in use by Respondents from December 2017 until May 2020 (the "2017 Advisory Agreement"); the second agreement, titled "FamilyWealth Client Agreement," referred to both FWA and FWAM, and was in use by Respondents from May 2020 through Spring 2024 (the "2020 Advisory Agreement"); and the third agreement, also titled "FamilyWealth Client Agreement," referred to both FWA and FWAM, and was in use by Respondents from Spring 2024 through December 2024 (the "2024 Advisory Agreement," and collectively with the 2017 Advisory Agreement and the 2020 Advisory Agreement, the "Advisory Agreements").

## Improper Limitation of Liability

7. Language purporting to limit an adviser's liability in an advisory agreement is also called a "hedge clause." Whether a particular hedge clause is misleading is a facts-and circumstances determination.

8. On June 5, 2019, the Commission published the Commission Interpretation Regarding Standard of Conduct for Investment Advisers, IA Rel. No. 5248 (June 5, 2019) ("Commission Statement"). The Commission Statement provided in relevant part that "there are few (if any) circumstances in which a hedge clause in an agreement with a retail client would be consistent with [] antifraud provisions, where the hedge clause purports to relieve the adviser from liability for conduct as to which the client has a non-waivable cause of action against the adviser provided by state or federal law. Such a hedge clause generally is likely to mislead those retail clients into not exercising their legal rights, in violation of the antifraud provisions, even where the agreement otherwise specifies that the client may continue to retain its non-waivable rights." *Id*. at p. 11, fn. 31.

9. During the Relevant Period, Respondents used improper hedge clauses in their Advisory Agreements with retail clients.

10. From at least December 2017 through May 2020, Respondents used the 2017 Advisory Agreement with hedge clauses that stated, in relevant parts:

**R. Limited Liability**: [Respondents] shall not be liable to Client, its agents or representatives thereof, for any act, omission, or determination made in connection with this Agreement except for its willful misconduct or gross negligence. . .”

**T. Liability** [Respondents] shall not be subject to liability for any act or omission in the course of, or connected with, its performance of this Agreement, except in the case of willful misfeasance, bad faith or gross negligence on the part of [Respondents], or the reckless disregard by the [Respondents] of its obligations and duties under this Agreement, but nothing herein shall in any way constitute a waiver or limitation of any rights which Client may have under any federal or state securities law or the Employee Retirement Income Security Act of 1974 (“ERISA”), if applicable…

**Schedule A, T. Indemnification**: Notwithstanding any provision of this Agreement, Client shall defend, indemnify and hold harmless [Respondents]… against any and all losses, claims, damages, liabilities, actions, costs or expenses to which such indemnified party may become subject to the extent such losses, claims, damages, liabilities, actions, costs or expenses arise out of or are based upon . . . (b) any violation of federal or state securities, trust or insurance laws by [Respondents], its officers, its agents, or its employees arising out of the purchase, sale, offer to purchase or offer to sell any security; (c) any breach, default or violation of, under or with respect to any of [Respondents’] duties, obligations, representations, warranties or covenants contained in this Agreement; or (d) any negligence, gross negligence, recklessness or willful or intentional misconduct of, or violation of any law by [Respondents] or any FamilyWealth employee or agent.

11. Around May 2020, Respondents revised the 2017 Advisory Agreement, but did not make any substantive changes to the hedge clause language above. Respondents used this new advisory agreement, the 2020 Advisory Agreement, for all new clients starting in May 2020. Respondents did not, however, have existing clients execute the updated 2020 Advisory Agreement.

12. Around Spring 2024, after an examination was conducted by the SEC’s Division of Examinations, Respondents again revised the advisory agreement, creating the 2024 Advisory Agreement. Respondents used the 2024 Advisory Agreement for all new clients starting in Spring 2024 through December 2024. Respondents did not, however, have existing clients execute the updated 2024 Advisory Agreement. The 2024 Advisory Agreement’s Schedule A, Section T, Indemnification, was revised to remove the improper limitation of liability language, however, Sections R and T remained the same as in the earlier advisory agreements.

13. The Advisory Agreements contained hedge clauses that purported to broadly limit Respondents’ liability. The language, when read in its entirety, is inconsistent with an adviser’s fiduciary duty because it may mislead Respondents’ retail clients into not exercising their non-waivable legal rights. Accordingly, the Respondents’ use of these hedge clauses violated Section 206(2) of the Advisers Act.

## Omitted Assignment Clause

14. Section 205(a)(2) of the Advisers Act provides that "[n]o investment adviser registered or required to be registered with the Commission shall enter into, extend, or renew any investment advisory contract . . . if such contract . . . (2) fails to provide, in substance, that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract".

15. During the Relevant Period, Respondents had clients sign the Advisory Agreements that failed to provide, in substance, that no assignment of such contract shall be made by the investment adviser without the clients' consent, as required by Section 205(a)(2) of the Advisers Act. To the contrary, from at least December 2017 through May 2020, Respondents had clients sign the 2017 Advisory Agreement that stated, in relevant part, in Section L, Assignment, that: "[Respondents] retain[] that right to assign or otherwise transfer this Agreement or its rights or obligations set forth hereunder without notice *and without Client's consent.*" (emphasis added).

16. Around May 2020, Respondents revised the 2017 Advisory Agreement, creating the 2020 Advisory Agreement, but did not make any substantive changes to Section L.

17. Around Spring 2024, after an examination was conducted by the SEC's Division of Examinations, Respondents revised the advisory agreement. However, the revisions in 2024 did not fix the violation because the 2024 Advisory Agreement continued to fail to provide, in substance, that the adviser could not assign the agreement without the client's consent.

18. Accordingly, during the Relevant Period, the Advisory Agreements violated Section 205(a)(2) of the Advisers Act.

## Custody Rule Failures

19. The custody rule requires that registered investment advisers who have custody of client funds or securities implement an enumerated set of requirements to prevent the loss, misuse, or misappropriation of those assets.

20. An investment adviser has custody of client assets if it holds, directly or indirectly, client funds or securities, or if it has the ability to obtain possession of those assets. *See* Rule 206(4)-2(d)(2). Custody includes "[a]ny arrangement . . . under which [an investment advisor is] authorized or permitted to withdraw client funds or securities maintained with a custodian upon [its] instruction to the custodian." *See* Rule 206(4)-2(d)(2).

21. An investment adviser who has custody of client assets generally must, among other things: (1) maintain clients' assets with a qualified custodian; (2) notify the client in writing of accounts opened by the adviser at a qualified custodian on the client's behalf; (3) have a reasonable basis for believing that the qualified custodian sends account statements at least quarterly to clients, except if the client is a limited partnership or limited liability company for which the adviser or a related person is a general partner, the account statements must be sent to each limited partner or

member; and (4) obtain verification of client funds and securities by actual examination each calendar year by an independent public accountant at a time chosen by the accountant without prior notice or announcement to the adviser. *See* Rule 206(4)-2(a).

22. The 2017 Advisory Agreement had a section titled "Schedule A – Custodial Service Arrangement" – that, from at least December 2017 through May 2020, stated in relevant part:

> H. Trading Authorizations: [Respondents] may give instructions to Custodians selected by [Respondents] with respect to such assets, and such Custodians may rely on [Respondents'] instructions without obtaining Client's approval, counter-signature, or co-signature. [Respondents'] authority will include, without limitation, the authority: … (e) to withdraw or direct the disbursements of assets held in any account maintained on behalf of Client; . . . (h) generally to do and take all actions considered necessary or desirable by [Respondents] with respect to any account maintained on behalf of Client or the assets held therein.

23. Around May 2020, Respondents revised the 2017 Advisory Agreement, creating the 2020 Advisory Agreement, but did not make any substantive changes to the custody language above.

24. Around Spring 2024, after an examination was conducted by the SEC's Division of Examinations, Respondents again revised the advisory agreement, creating the 2024 Advisory Agreement, but these revisions still provided the Respondents with the authority to withdraw client funds or securities without client notice. The 2024 Advisory Agreement's custody language provided, in relevant part:

> H. Trading Authorization: [Respondents are] authorized to give instructions to the custodian with respect to all investment decisions regarding the Assets and the Custodian is hereby authorized and directed to effect transactions, deliver securities, make payments and otherwise take such actions as [Respondents] shall direct in connection with the performance of [Respondents'] obligations in respect of the Assets.

25. By virtue of Respondents' authority under the Advisory Agreements during the Relevant Period, which could include Respondents giving instructions regarding the withdrawal of client funds or securities, Respondents had custody of the assets in its clients' accounts under Rule 206(4)-2.

26. Respondents failed to obtain verification of client funds and securities by annual actual examinations by an independent public accountant for at least the calendar years 2019 through 2024.

27. By failing to obtain an annual examination by a public accountant for the calendar years 2019 through 2024, FWA and FWAM violated Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder.

## Compliance Failures

28. Rule 206(4)-7 under the Advisers Act requires registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and rules thereunder.

29. From at least October 2017 through approximately August 2021, FWA's compliance manuals contained policies and procedures concerning hedge clauses and assignment. For instance, FWA's compliance manual in use in December 2019, provided that:

a. "[n]o FWA Investment Management Agreement will contain a provision that will cause a client to waive compliance with any provision, rule or order under the Investment Advisers Act of 1940 or any other applicable law. In addition, no FWA Investment Management Agreement will contain a hedge clause or other provision, which disclaims FWA's liability for any violation of law. Such a provision would be deemed void by virtue of Section 215 of the Investment Advisers Act of 1940"; and

b. "[p]ursuant to Section 205(a)(2) of the Investment Advisers Act of 1940, the Investment Advisory Contract between FWA and each client will contain a provision prohibiting the assignment of the contract without the consent of the client".

30. From at least August 2021 through December 2024, FWA's new compliance manual contained policies and procedures concerning hedge clauses and assignment. Specifically, FWA's compliance manual, from at least August 2021, provided that:

c. "FamilyWealth Advisers, LLC's advisory agreements meet all appropriate regulatory requirements and . . . do not contain any hedge clauses"; and

d. FamilyWealth Advisers, LLC's advisory agreements meet all appropriate regulatory requirements and . . . contain a non-assignment clause".

31. As described above, during the Relevant Period, FWA's Advisory Agreements contained hedge clauses and improper assignment clauses. Accordingly, during the Relevant Period, FWA failed to implement policies and procedures that were reasonably designed to prevent violations of the Advisers Act and rules thereunder in violation of Section 206(4) and Rule 206(4)-7 thereunder.

32. During the Relevant Period, FWAM's compliance manuals included policies and procedures concerning hedge clauses and assignment that are substantially similar to those in the December 2019 FWA compliance manual.

33. However, as described above, during the Relevant Period, FWAM's Advisory Agreements contained hedge clauses and improper assignment clauses. Accordingly, during the Relevant Period, FWAM failed to implement policies and procedures that were reasonably designed

to prevent violations of the Advisers Act and rules thereunder in violation of Section 206(4) and Rule 206(4)-7 thereunder.

## Violations

34. As a result of the conduct described above, Respondents willfully[2] violated Section 206(2) of the Advisers Act, which makes it unlawful "to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." Scienter is not required to establish a violation of Section 206(2), but rather may rest upon 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, 194-195 (1963)).

35. As a result of the conduct described above, Respondents willfully violated Section 205(a)(2) of the Advisers Act, which provides that "[n]o investment adviser registered or required to be registered with the Commission shall enter into, extend, or renew any investment advisory contract . . . if such contract . . . (2) fails to provide, in substance, that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract…".

36. As a result of the conduct described above, Respondents willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, which, among other things, requires registered investment advisers that have custody of client funds or securities to have independent public accountants conduct a verification of those client funds and securities by actual examination at least once each calendar year.

37. As a result of the conduct described above, Respondents willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which require, among other things, that an investment adviser adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

## Respondents' Remedial Efforts

38. In determining to accept the Offers, the Commission considered the remedial acts undertaken by Respondents, including its revisions in December 2024 to the advisory agreement, distribution of the revised agreement to all existing clients, and request that all existing clients sign the revised advisory agreement and return the agreements to the firms.

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[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).

## IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondents' Offers.

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

A. Respondents cease and desist from committing or causing any violations and any future violations of Sections 206(2), 205(a)(2), and 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 promulgated thereunder.

B. Respondents are censured.

C. FWA shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $85,000 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 FWA as 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 Director, Division of Enforcement, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294.

D. FWAM shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $65,000 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 FWAM as 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 Director, Division of Enforcement, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294.

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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 Respondents 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