

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11298 / August 14, 2024

In the Matter of

**Off-Channel
Communications at
Registered Entities**

Respondents.

**ORDER UNDER RULES 262(b)(2),
506(d)(2)(ii), AND 602(e) OF THE
SECURITIES ACT OF 1933 AND RULE
503(b)(2) OF REGULATION
CROWDFUNDING GRANTING
WAIVERS OF THE DISQUALIFICATION
PROVISIONS OF RULES 262(a)(4)(ii),
506(d)(1)(iv)(B), AND 602(c)(3) OF THE
SECURITIES ACT OF 1933 AND RULE
503(a)(4)(ii) OF REGULATION
CROWDFUNDING**

I.

Pursuant to the Initiative to Investigate Off-Channel Communications at Registered Entities (“Off-Channel Communications Initiative”),¹ the Division of Enforcement determined to recommend that the Securities and Exchange Commission (“Commission”) accept settlement offers from 11 SEC registered broker-dealers (“Broker-Dealers”), three SEC registered investment advisers (“Investment Advisers”), and 11 dual-registered broker-dealer and investment advisers (“Dual-Registered Entities”) (together, the “Firms”) that committed certain non-scienter based recordkeeping violations of the federal securities laws and agreed to consent to certain standardized settlement terms.

II.

The Commission has issued separate orders (“Recordkeeping Orders”) instituting administrative and cease-and-desist proceedings against the Firms.² These proceedings are

¹ The Off-Channel Communications Initiative is an investigative initiative conducted by the Division of Enforcement.

² The 25 Firms subject to this Order are named in the Appendix to this Order. Apex Clearing Corporation, BNY Mellon Securities Corporation (“BNYMSC”), Cetera Investment Services LLC, Cowen and Company, LLC, First Trust Portfolios L.P., Great Point Capital, LLC, Haitong International Securities (USA) Inc., Pershing LLC, TD Securities (USA) LLC, Truist Investment Services, Inc., and Truist Securities, Inc. are Commission-registered broker-dealers; Cowen Investment Management LLC (“CIM”), Epoch Investment Partners, Inc., and Truist Advisory Services, Inc. are Commission-registered investment advisers; and Ameriprise Financial Services, LLC,

consistent with previously-accepted settlement terms and are brought pursuant to Sections 15(b) and 21C 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”) for willful violations of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder by the Dual-Registered Entities and Broker-Dealers and for willful violations of Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder by the Dual-Registered Entities and Investment Advisers for their failure to comply with the recordkeeping requirements on broker-dealers and investment advisers to ensure that they responsibly discharge their crucial roles in our markets. Specifically, the Firms failed to keep for prescribed periods, and furnish copies of, such business-related records as necessary or appropriate in the public interest or for the protection of investors. The Firms admit to facts set forth in their respective Recordkeeping Orders and acknowledge that their conduct violated the federal securities laws. The Recordkeeping Orders will require the Dual-Registered Entities and Broker-Dealers to cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder, require the Dual-Registered Entities and Investment Advisers to cease and desist from committing or causing any violations and any future violations of Section 204 of the Advisers Act and Rule 204-2 thereunder, and require the Firms to, among other things, undertake to retain a compliance consultant to conduct a comprehensive review of their supervisory, compliance, and other policies and procedures designed to ensure that all relevant electronic communications are preserved in accordance with the requirements of the federal securities laws. The Recordkeeping Orders will trigger certain disqualifications from exemptions from registration available under the Securities Act of 1933 (“Securities Act”) for the Firms.

III.

Rule 262(a) of Regulation A provides for disqualification from the Regulation A exemption from registration under the Securities Act for offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) of the Exchange Act or Section 203(e) of the Advisers Act that places limitations on that entity’s activities, functions, or operations. *See* 17 C.F.R. § 230.262(a)(4)(ii). Similarly, Rules 506(d) of Regulation D and 503(a) of Regulation Crowdfunding provide for disqualification from the Regulation D and Regulation Crowdfunding exemptions from registration under the Securities Act for certain offerings if, among other things, the relevant entity is subject to a Commission order pursuant to Section 15(b) of the Exchange Act or Section 203(e) of the Advisers Act that places limitations on that entity’s activities, functions, or operations. *See* 17 C.F.R. §§ 230.506(d)(1)(iv)(B) and 227.503(a)(4)(ii).

Cetera Advisor Networks LLC (“Cetera Advisor Networks”), Edward D. Jones & Co., L.P., Hilltop Securities Inc., LPL Financial LLC, Osaic Services, Inc. (“Osaic Services”), Osaic Wealth, Inc., Piper Sandler & Co., Raymond James & Associates, Inc., RBC Capital Markets, LLC, and TD Private Client Wealth LLC are dual-registered broker-dealers and investment advisers. While Cetera Advisor Networks and Osaic Services are treated as dual-registered entities and CIM is treated as a Commission-registered investment adviser for purposes of this Order, effective July 6, 2023, September 29, 2023, and December 15, 2023, respectively, Cetera Advisor Networks, Osaic Services, and CIM are no longer Commission-registered investment advisers. Finally, while BNYMSC is also registered with the Commission as an investment adviser, it is being treated as a broker-dealer for purposes of this Order as its Recordkeeping Order charges violations only of the Exchange Act.

Rule 602(a) of Regulation E provides an exemption from registration under the Securities Act, subject to certain conditions, for securities issued by certain small business investment companies and business development companies. *See* 17 C.F.R. § 230.602(a). Rule 602(c)(3) of Regulation E makes this exemption unavailable for the securities of an issuer if, among other things, any investment adviser or any underwriter of the securities to be offered is subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act or Section 203(e) of the Advisers Act. *See* 17 C.F.R. § 230.602(c)(3).

The Commission has the authority to waive the disqualifications of Regulations A, D, E, and Crowdfunding upon a showing of good cause and without prejudice to any other action by the Commission, if the Commission determines that it is not necessary under the circumstances that an exemption be denied. *See* 17 C.F.R. §§ 230.262(b)(2), 230.506(d)(2)(ii), 230.602(e), and 227.503(b)(2).

In light of the Firms' participation in the Off-Channel Communications Initiative, assuming the Firms comply with the terms of the Recordkeeping Orders, and in light of the benefits of the Off-Channel Communications Initiative, the Commission has determined that, pursuant to Rules 262(b)(2), 506(d)(2)(ii), and 602(e) of the Securities Act and Rule 503(b)(2) of Regulation Crowdfunding, good cause exists for not denying the various exemptions from registration discussed herein.

IV.

Accordingly, IT IS ORDERED, pursuant to Rules 262(b)(2), 506(d)(2)(ii), and 602(e) of the Securities Act and Rule 503(b)(2) of Regulation Crowdfunding, that waivers from the application of the disqualification provisions of Rules 262(a)(4)(ii), 506(d)(1)(iv)(B), and 602(c)(3) of the Securities Act and Rule 503(a)(4)(ii) of Regulation Crowdfunding, resulting from the entry of the Recordkeeping Orders against the Firms are hereby granted to the Firms as reflected in the attached appendix. Nothing in this Order shall affect any pre-existing disqualification under the above provisions and nothing in this Order shall be interpreted to waive or limit any conditions or undertakings which are in place as a result of any prior waiver granted to any Firm. Failure to comply with terms of a Recordkeeping Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke

or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under these circumstances.

Because of the unique nature of the Off-Channel Communications Initiative, this Order and the circumstances under which it was issued shall not be relied upon by any entity that may seek a waiver in the future from the disqualifications discussed herein.

By the Commission.

Vanessa Countryman
Secretary

Appendix: Firms

Appendix

(Waivers from disqualification under Regulations A, D, E, and Crowdfunding)

Ameriprise Financial Services, LLC
Apex Clearing Corporation
BNY Mellon Securities Corporation
Cetera Advisor Networks LLC
Cetera Investment Services LLC
Cowen and Company, LLC
Cowen Investment Management LLC
Edward D. Jones & Co., L.P.
Epoch Investment Partners, Inc.
First Trust Portfolios L.P.
Great Point Capital, LLC
Haitong International Securities (USA) Inc.
Hilltop Securities Inc.
LPL Financial LLC
Osaic Services, Inc.
Osaic Wealth, Inc.
Pershing LLC
Piper Sandler & Co.
Raymond James & Associates, Inc.
RBC Capital Markets, LLC
TD Private Client Wealth LLC
TD Securities (USA) LLC
Truist Advisory Services, Inc.
Truist Investment Services, Inc.
Truist Securities, Inc.