

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4778 / September 26, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18215

In the Matter of

**VisionPoint Advisory Group,
LLC**

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 VisionPoint Advisory Group, LLC (“Respondent” or “VisionPoint”).

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 them 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:

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.

SUMMARY

1. This matter involves the failure of VisionPoint – a registered investment adviser – to disclose to clients that its owner and Investment Adviser Representatives (“IARs”) received forgivable loans of more than \$1.3 million and additional non-forgivable loans from a broker-dealer (the “Broker-Dealer”) that provides clearing and custody services for VisionPoint’s advisory clients. VisionPoint did not disclose the loans or the conflict of interest arising from this compensation in Commission filings or otherwise to clients. By failing to disclose its conflict of interest completely and accurately, the adviser violated Section 206(2) of the Advisers Act. The adviser also violated Section 207 of the Advisers Act by omitting material facts from its Commission filings concerning its relationship with the Broker-Dealer.

RESPONDENT

2. VisionPoint is an Iowa limited liability company with its principal place of business in West Des Moines, Iowa. Since January 2014, VisionPoint has been registered with the Commission as an investment adviser.

BACKGROUND

3. VisionPoint provides financial planning, consulting, and investment management services to a variety of clients, including individuals, trusts, estates, corporations, other business entities, and pension and profit sharing plans.

4. In October 2013, VisionPoint entered into an agreement with the Broker-Dealer to provide execution of trades, custody of assets, and reporting services for VisionPoint’s advisory clients.

5. In connection with its agreement, the Broker-Dealer made a series of forgivable and non-forgivable loans to VisionPoint’s owner and two IARs. In October 2013, VisionPoint’s owner received a \$938,874 forgivable loan and two IARs received forgivable loans, one in the amount of \$319,650 and the other \$125,249 (collectively, the “Forgivable Loans”) which were based on the recipients’ gross productions from client accounts at a prior broker-dealer. The Broker-Dealer made two additional loans to VisionPoint’s owner in December 2014 in the amounts of \$150,000 and \$638,532 (the “Non-Forgivable Loans”). The Forgivable Loans and Non-Forgivable Loans were used to cover operational costs, including costs associated with transitioning VisionPoint’s business from its prior broker-dealer to the Broker-Dealer.

6. Under its terms, the Broker-Dealer would forgive the Forgivable Loans over a five-year period on a straight-line basis plus interest, per year on the anniversary date of the agreement, so long as VisionPoint’s owner and two IARs continued to be associated as registered representatives with the Broker-Dealer and complied with their contractual obligations with the Broker-Dealer. The Non-Forgivable Loans bore interest rates of 4.25% or 6.5% until their maturity dates approximately three or five years after the loans were made. Both Non-

Forgivable Loans delayed paying principal for six months and one of the Non-Forgivable Loans loans was interest-free for six months. The Non-Forgivable Loans also required VisionPoint's owner to remain a registered representative of the Broker-Dealer. Because each of the loans required the borrower, *i.e.*, VisionPoint's owner and two IARs, to be associated as registered representatives with the Broker-Dealer, they presented a conflict of interest for VisionPoint.

7. As part of the transition to Broker-Dealer, VisionPoint retained an outside compliance consultant to help prepare its Form ADV. VisionPoint was required to file and did file Forms ADV and annual amendments with the Commission.

8. In its Form ADV Part 2A Brochures and accompanying Part 2B Supplements filed after selecting the Broker-Dealer, VisionPoint disclosed certain aspects of its new relationship with the Broker-Dealer and the services the Broker-Dealer may provide to VisionPoint's clients. Specifically, VisionPoint disclosed that it "recommend[s]" the Broker-Dealer for executing trades and holding assets for VisionPoint's clients, and that certain VisionPoint executive officers and IARs are also registered representatives of Broker-Dealer. According to the Form ADV Brochures, "[t]he supervised persons will accept compensation for the sale of securities or other investment products This presents a conflict of interest and gives the supervised person an incentive to recommend products based on the compensation received rather than on the client's needs." VisionPoint did not seek the compliance consultant's advice on whether the loans to VisionPoint's owner and IARs had to be disclosed as a conflict of interest in the Form ADV.

9. VisionPoint did not disclose the loans to its advisory clients, either in its Forms ADV filed with the Commission or otherwise. VisionPoint also did not disclose the conflict of interest inherent in the fact that VisionPoint's owner and IARs received compensation from the Broker-Dealer in the form of forgiveness of the Forgivable Loans and delayed paying principal or interest on the Non-Forgivable Loans, while at the same time using the Broker-Dealer for execution, custody and reporting services, recommending that clients open brokerage accounts with the Broker-Dealer, and obtaining investment research from the Broker-Dealer. The Forgivable Loans and Non-Forgivable Loans created a financial incentive for VisionPoint to use the Broker-Dealer and a disclosure should have been included in Part 2A and Part 2B of VisionPoint's Form ADV.

VIOLATIONS

10. Section 206(2) of the Advisers Act makes it unlawful for an adviser to use instruments of interstate commerce to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or prospective client. Scierer is not required to establish a violation of Section 206(2), but rather 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)).

11. Section 207 of the Advisers Act, among other things, makes it unlawful for a person to “willfully to omit to state... material fact[s]” in registration applications and reports filed with the Commission.

12. As a result of the negligent conduct described above, VisionPoint willfully² violated Sections 206(2) and 207 of the Advisers Act.

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

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 207 of the Advisers Act.

B. Respondent shall be and hereby is censured.

C. Respondent shall, within fourteen (14) days of the entry of this Order, pay a civil money penalty in the amount of \$45,000 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:

² A willful violation of the securities laws means merely “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.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

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 Respondent 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 Paul A. Montoya, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 900, Chicago, IL, 60604.

D. 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.

Brent J. Fields
Secretary