UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10852 / September 24, 2020

INVESTMENT COMPANY ACT OF 1940
Release No. 34027 / September 24, 2020

INVESTMENT ADVISERS ACT OF 1940
Release No. 5592 / September 24, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20067

In the Matter of **PLATINUM WEALTH PARTNERS, INC. and DAVID L. POTTER,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 203(e), 203(f), AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY 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 Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Platinum Wealth Partners, Inc. ("PWP") and David L. Potter ("Potter") (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 it and the subject matter of these proceedings, which are admitted, and except as provided herein in Section VI., Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company 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

These proceedings concern disclosure violations by PWP, a former registered investment adviser, and its principal, Potter, while selling promissory notes to individual retail investors, including certain advisory clients. After a period of rapid growth, in 2016 PWP began experiencing an increase in liabilities that exceeded its net income. After PWP defaulted on its bank line of credit, PWP turned to borrowing cash from investors in order to cover its business expenses and meet cash flow needs. While soliciting investors to purchase or renew approximately $1.6 million in PWP promissory notes (the "Notes"), PWP, which was directed by its founder, controlling owner, and chief executive officer Potter, gave the impression to investors that the business was profitable and failed to disclose that there was a risk of default associated with the Notes. As a result of PWP's and Potter's failure to exercise reasonable care in providing investors with complete and accurate disclosures regarding PWP's financial condition, PWP and Potter violated Sections 17(a)(2) and 17(a)(3) of the Securities Act and Section 206(2) of the Advisers Act.

Respondents

1. **Platinum Wealth Partners, Inc.** is a Florida corporation with its principal place of business in Tampa, Florida. PWP was registered with the Commission as an investment adviser from August 15, 2011 until March 28, 2018, when it filed a Form ADV-W withdrawing from registration. During the relevant period, PWP offered portfolio management services and financial planning services to clients and prospective clients. In its most recent Form ADV filed on December 15, 2017, PWP had approximately $523 million in assets under management, predominately in discretionary accounts.

2. **David L. Potter**, age 56, is a resident of St. Petersburg, Florida. At all times, Potter was PWP's founder, controlling owner, chief executive officer, chief financial officer, and chief compliance officer. He is a Chartered Financial Analyst charterholder.

[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.

Facts

3. On October 28, 2015, PWP entered into a revolving line of credit agreement ("Line of Credit") with a financial institution ("Bank") that allowed PWP to borrow up to $1.5 million. Pursuant to the terms of the Line of Credit, PWP granted the Bank a lien on and a security interest in all of PWP's assets. PWP drew down on the entire Line of Credit and was required to make monthly interest payments.

4. In early 2016, PWP's capital costs and expenses exceeded the funds it generated from advisory fees, as it expanded its operations with multiple satellite offices across the country. From May through August 2016, PWP defaulted on its Line of Credit obligations by failing to make monthly interest payments. In August 2016, the Bank recalled the Line of Credit. Shortly thereafter, PWP issued the first Note to one of its clients.

5. To bridge the gap between PWP's advisory fees and its operational expenses and additional costs related to growing the business, beginning in August 2016, PWP and Potter turned to raising money by issuing Notes. The Notes are unsecured promissory notes with a maturity term of one year. PWP and Potter contacted retail investors and clients ("investors") to raise cash. To attract investment, and compensate investors for the additional risk associated with unsecured investments, Potter set the promissory note interest rate at eight percent, well above prevailing bond market rates.

6. In the course of explaining the investment, Potter told investors that the funds would be used for continued business expansion. Potter failed to disclose that the cash raised from issuing the Notes was necessary to cover the firm's ongoing business expenses and might not be repaid when due if the business expansion proved unsuccessful. Moreover, Potter failed to disclose that PWP had borrowed the full amount of and defaulted on the Line of Credit.

7. The only document that PWP provided to investors at the time of investment or renewal was a one page promissory note agreement, which primarily sets forth the interest rate and maturity date. This document did not disclose to investors the degree of risk they faced in purchasing or renewing the Notes, nor did it mention what the cash raised would be used for. In addition, investors were not provided with PWP's financial statements so they could assess PWP's financial condition. Accordingly, investors purchased or renewed their Notes without the benefit of this information, invested based on the high interest rate and purportedly stable interest income, and with the expectation that they would receive their full principal at maturity.

8. Based on his regular review of PWP's financial statements, Potter knew that the firm's cash balance was often negative, and that its revenues were insufficient to timely cover its expenses. In fact, PWP often issued checks that were returned for insufficient funds, including checks issued to investors to repay the principal and interest on the Notes. PWP and Potter did not fully disclose to investors PWP's financial condition, including the risks of default and liquidity associated with the Notes.

9. As a result, PWP and Potter succeeded in raising approximately $1.6 million from the sale of Notes to nine retail investors, most of whom were clients at the time they purchased the Notes. Although the maturity date on most of the Notes expired two years ago, PWP has

only repaid to investors $371,000 in principal. As such, PWP currently owes approximately $1.2 million to investors.

10. As PWP's CEO, CFO, and CCO, Potter was responsible for making decisions regarding the Notes, overseeing the investment process, and ensuring the accuracy and completeness of the relevant disclosures made to prospective investors, including his advisory clients. Based on his approval of PWP's expenses and periodic review of its financial statements, Potter was aware of PWP's cash flow issues and financial condition. Potter failed to exercise reasonable care in ensuring that investors, including PWP's advisory clients, received appropriate information regarding PWP's financial condition when deciding whether to invest in or renew the Notes.

Violations

11. As a result of the conduct described above, PWP and Potter willfully[2] violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit any person in the offer or sale of securities from obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make statements made not misleading, and from engaging in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser. Violations of Sections 17(a)(2) and 17(a)(3) may rest on a finding of simple negligence. *Aaron v. SEC*, 446 U.S. 680, 697 (1980). Proof of scienter is not required to establish a violation of Sections 17(a)(2) and 17(a)(3). *Id.*

12. As a result of the conduct described above, PWP and Potter willfully violated Section 206(2) of the Advisers Act, which makes it "unlawful for any investment adviser . . . directly or indirectly to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." A violation of Section 206(2) may rest on a finding of simple negligence; scienter is not required. *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)).

V.

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

Accordingly, pursuant to Section 8A of the Securities Act, Sections 203(e), 203(f), and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

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[2] "Willfully," for purposes of imposing relief under Sections 203(e) and 203(f) 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[ed]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

A. Respondents PWP and Potter cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Section 206(2) of the Advisers Act.

B. Respondents PWP and Potter are censured.

C. Respondent Potter be, and hereby is, suspended from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for a period of 12 months, effective on the second Monday following the entry of this Order.

D. Respondent Potter is prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter for a period of 12 months, effective on the second Monday following the entry of this Order.

E. Respondents PWP and Potter shall pay, joint and severally, disgorgement of $1,204,000, prejudgment interest of $66,847.20, and a civil penalty of $60,000 to the Securities and Exchange Commission for a total payment of $1,330,847.20. Payment shall be made in the following installments: $50,000 within 10 days of the issuance of the Order, $250,000 within 180 days of the issuance of the Order, $350,000 within 270 days of the issuance of the Order, and $680,847.20 within 360 days of the issuance of the Order. Payments shall be applied first to post order interest, which accrues pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717. Prior to making the final payment set forth herein, Respondents shall contact the staff of the Commission for the amount due. If Respondents fail 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) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondents 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) Respondents 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 PWP and Potter as Respondents 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 Jessica M. Weissman, Assistant Regional Director, Division of Enforcement, Miami Regional Office, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1950, Miami, FL 33131, or such other person or address as the Commission staff may provide.

F. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, prejudgment interest and civil penalties referenced in paragraph IV. E above. 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.

VI.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Potter, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary