

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940

Release No. 5745 / June 3, 2021

ADMINISTRATIVE PROCEEDING

File No. 3-20358

In the Matter of

Emperor Investments, Inc.

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 Emperor Investments, Inc. (“Emperor” 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 Administrative 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:

Summary

1. This matter involves a registered investment adviser, Emperor, which disseminated false and misleading marketing materials and performance data. Emperor operated a "robo-adviser," an automated digital investment advisory program that was marketed to individuals through the Emperor's website, as well as through social media platforms.

2. Throughout its operation, from June 2018 until October 2019 (the "Relevant Period"), Emperor's website, which was accessible to clients and prospective clients, was misleading in several respects. For example, Emperor stated that it had outperformed the market for the past 11 years when, in fact, the claim was based on modeled returns, and Emperor had been in operation for less than two years, during which time it underperformed the market. In addition, Emperor paid bloggers, which were a significant source of Emperor's new clients, for referrals without complying with applicable requirements.

3. Emperor also failed to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder. Emperor's dissemination of false and misleading advertising and marketing materials and performance data, along with its failure to comply with requirements concerning the payment of bloggers for client referrals, was caused, in part, by its ineffective compliance program.

Respondent

4. Emperor is a Delaware corporation, with its principal place of business in Guelph, Canada. Emperor registered with the Commission as an investment adviser in March 2017, and terminated its registration with the Commission and ceased operations as an investment adviser in October 2019. Emperor's clients were all based in the United States, and it delivered its advisory services and primarily interacted with clients through its internet website. In its Form ADV filed September 26, 2019, Emperor reported assets under management of \$621,000 as of December 31, 2018.

Facts

Emperor's Advertising and Marketing Materials

5. During the Relevant Period, Emperor's publicly available website stated that "Emperor portfolios have been able to outperform the market over the past 11 years." This

¹ The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

representation was based on Emperor's modeled application of its investment strategy for the years 2007 to 2018, and not actual investment performance that it achieved. In fact, Emperor was in operation for less than two years, from June 2018 to October 2019, during which it underperformed the S&P 500 index (the index it was purportedly using as a comparison).

6. In addition, Emperor's website stated that it had achieved an "average annual return of 16.86%." This statement was misleading for two reasons. First, based on its own calculation, Emperor's return was 5.03% during its period of actual operation, which it did not advertise. Second, as discussed, Emperor's purported average annual return of 16.86% was based on modeled testing, which used historical market data and implied Emperor began its operations in 2007 rather than 2018 to project a hypothetical return, without disclosing that this performance was not actual and was based on modeled application of an investment strategy.

7. Emperor's website also stated, "Emperor's technology has been tested for 11 years and has outperformed our closest competitor since inception." This statement was misleading because, as stated above, Emperor was in operation for less than two years. Emperor failed to disclose that its purported eleven-year performance was hypothetical and based on modeled testing.

8. Additionally, Emperor's statement misleadingly compared its modeled performance to the actual, eleven-year performance of another unnamed robo-advisor. Emperor identified this unnamed robo-advisor as its closest competitor despite a significant difference in their respective assets under management.

Emperor Paid Bloggers for Client Referrals without Making the Required Disclosures

9. During the Relevant Period, Emperor conducted a client referral program through which it paid cash compensation to certain bloggers for successfully soliciting new clients to open Emperor accounts. The bloggers would often place an Emperor hyperlink in or near a favorable blog post about Emperor. In total, Emperor paid approximately \$3,400 to these participating bloggers for referring new clients to Emperor and an additional approximately \$12,500 for blogger reviews.

10. Emperor made these payments based on the amount of assets deposited in new accounts from client referrals without the disclosure and documentation required under the Cash Solicitation Rule (Advisers Act Rule 206(4)-3), as in effect during the Relevant Period. Under that Rule, Emperor was required to have a written solicitation agreement with the bloggers to whom it made cash payments for soliciting clients, to require that the bloggers provide certain disclosures to solicited clients, and to receive written acknowledgement of receipt of these disclosure documents by the solicited client before, or at the time of, entering into any written or oral investment advisory contract. Emperor did not fulfill these requirements in conjunction with the referral program.

Emperor's Compliance Failures

11. The dissemination of misleading marketing materials and performance data was caused, in part, by Emperor's failure to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder. During the Relevant Period, Emperor's policies and procedures required review and approval of any marketing or advertising materials. However, the policies and procedures failed to include a process for confirming the accuracy of statements (including, for example, statements concerning investment performance) made on Emperor's website. Emperor also failed to implement its advertising compliance policy because it did not conduct a review of all marketing materials, as required by the policy.

12. Emperor's internal policies and procedures also stated that Emperor did not pay referral fees. Emperor did not implement its policies and procedures in connection with payments made by Emperor to bloggers for successfully soliciting new clients to open Emperor accounts.

Cooperation and Remediation

13. Throughout the staff's investigation, Emperor cooperated with the staff by providing timely, voluntary narrative responses to the questions posed by staff. Emperor met with the staff on multiple occasions and provided detailed factual summaries of relevant information. Emperor was extremely prompt and responsive in addressing staff inquiries. In addition, Emperor repaid fees to investors.

Violations

14. As a result of the conduct described above, Emperor willfully violated Section 206(2) of the Advisers Act, which prohibits an investment adviser from engaging 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) of the Advisers Act does not require proof of scienter but, rather, "may rest on a finding of simple 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, 195 (1963)).²

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).

15. As a result of the conduct described above, Emperor willfully violated Section 206(4) of the Advisers Act and Rules 206(4)-1, 206(4)-3, and 206(4)-7 thereunder, as in effect during the Relevant Period. Section 206(4) of the Advisers Act makes it “unlawful for any investment adviser . . . to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.” A violation of Section 206(4) and the rules thereunder does not require scienter. *Steadman*, 967 F.2d at 647. As in effect during the Relevant Period, Rule 206(4)-1 under the Advisers Act provided that it “shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business” for a registered investment adviser to “publish, circulate, or distribute any advertisement” which “contains any untrue statement of a material fact, or which is otherwise false or misleading.” As in effect during the Relevant Period, Rule 206(4)-3 prescribed requirements a registered adviser generally must satisfy for a cash fee to be properly paid to a solicitor including, among other things, that the solicitor must provide the client with a current copy of both the adviser’s and the solicitor’s written disclosure documents, and that the adviser must receive from the client a signed and dated acknowledgement of receipt of these disclosure documents before or at the time of entering into any written or oral investment advisory contract with such client. Rule 206(4)-7 under the Advisers Act requires registered investment advisers to, among other things, “[a]dopt and implement written policies and procedures reasonably designed to prevent violation” of the Advisers Act and the rules thereunder.

Emperor’s Cooperation and Remediation

In determining to accept the Offer, the Commission considered Emperor’s voluntary remediation and cooperation afforded the Commission staff.

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 cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)-1, 206(4)-3, and 206(4)-7 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall pay civil penalties of \$25,000.00 (USD) made payable 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). Payments shall be made in the following installments: Respondent shall make the first installment of \$12,500.00 within ten (10) days of the entry of this order, and the second installment of \$12,500.00 within three hundred sixty (360) days of the entry of this order. Payments shall be applied first to post order interest, which

accrues pursuant to 31 U.S.C. 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails 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) 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 Emperor 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 Adam S. Aderton, Co-Chief, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5012.

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.

E. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$25,000 based upon its cooperation in a Commission investigation or related enforcement action. If at any time following the entry of the Order, the Division of Enforcement (“Division”) obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Vanessa A. Countryman
Secretary