UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5361 / September 23, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19494

In the Matter of **HCR WEALTH ADVISORS** **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 HCR Wealth Advisors ("Respondent" or "HCR").

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 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 finds[1] that:

SUMMARY

Respondent failed to reasonably supervise Jeremy Joseph Drake ("Drake"), formerly an investment adviser representative of HCR, and failed to implement reasonable compliance-related policies and procedures in response to red flags about Drake's handling of client accounts. From 2012 to July 2016, Drake defrauded two HCR clients, a married couple, out of approximately $1.2 million in management fees, approximately $900,000 of which Drake received as incentive-based compensation from HCR. During the same period, Drake misappropriated a total of over $200,000 from the married couple and two other HCR clients to support a struggling restaurant that was majority owned by the married couple and in which Drake held a minority ownership interest.

HCR failed to reasonably supervise Drake and to implement reasonable policies and procedures in response to warnings about Drake's conduct and did not reasonably investigate when two clients complained about Drake's handling of their accounts.

RESPONDENT

1. Respondent HCR Wealth Advisors ("HCR") is a California corporation organized on September 1, 1996, with its principal place of business in Los Angeles, California. Respondent registered with the Commission as an adviser on April 16, 1999 and reported having over 700 clients and more than $900 million in assets under management as of December 31, 2018.

OTHER RELEVANT INDIVIDUALS

2. Jeremy Joseph Drake, age 41, resides in Los Angeles, California. Drake worked as a registered investment adviser representative of HCR from March 2009 until early July 2016, when HCR terminated him for misconduct concerning client accounts. Before his termination, Drake managed over $50 million in assets for more than twenty HCR clients. In *United States v. Jeremy Joseph Drake*, Case No. 2:18-cr-0058 (CAS) (C.D. Cal.), Drake pleaded guilty to wire fraud and was sentenced to 30 months of incarceration and ordered to pay $1,228,912.20 in restitution.

3. Client A is married to Client B, who was, at the time of the conduct described herein, a professional baseball player. They were clients of Respondent and Drake from 2009 until early July 2016, when they ended their relationship with Respondent and Drake.

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[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.

4. Client C, age 79, was a client of Respondent and Drake from March 2009 to April 2016, when she ended her relationship with Respondent and Drake.

5. Client D, age 56, was a client of Respondent and Drake from February 2014 to February 2015, when she ended her relationship with Respondent and Drake.

Drake's Management-Fee Fraud

6. From late 2012 to early July 2016, Drake lied to Clients A and B about how much they were paying HCR in management fees. Whereas Drake said they were paying a "VIP" rate of between 0.15% and 0.20% of their assets under management each year, they were actually paying HCR's standard 1.0% rate. Specifically, Drake told Clients A and B that HCR charged them 1.0% in the first instance, but then applied "fee credits" to their accounts over time, resulting in "net fees" of between 0.15% and 0.20%. In reality, HCR never had a "fee credit" or "net fee" system in place for any of its clients. As a result, HCR charged Clients A and B fees that were consistent with their signed advisory agreements, which provided for fees at a 1.0% rate, but were inconsistent with Drake's false representations to those clients about "fee credits" and their "net fees."

7. To perpetuate this scheme, Drake lied to Clients A and B and their representatives in person and in numerous emails, text messages, and telephone calls, including dozens of emails sent from his HCR email address. Drake also created numerous false and misleading documents concerning their management fees, including fabricated brokerage statements, which he emailed to Clients A and B and their representatives. Drake also used a misleading email address, which he said belonged to a manager at the clients' brokerage firm, to send more deceptive emails concerning the clients' fees. Drake did not disclose the existence of that email address to HCR, and emails sent from and received by that email address were not available for review by HCR. From late 2012 through July 2016, HCR collected approximately $1.5 million in management fees from Clients A and B – about $1.2 million more than Drake said they were paying. HCR paid approximately $900,000 of those additional fees to Drake as incentive-based compensation and retained the remaining $300,000.

Drake's Request to Engage in Outside Business Activity with the Restaurant

8. In July 2013, Drake sought approval of outside business activity, namely, to assist Clients A and B in managing a restaurant near Los Angeles, California (the "Restaurant"). Clients A and B owned 100% of the Restaurant at the time, and the Restaurant had an account under Drake's management at HCR. Drake informed HCR that Clients A and B had offered him an ownership interest in the Restaurant.

9. HCR's outside compliance consultant advised HCR to determine the source of investments into the Restaurant before granting Drake's request – warning of the risk of Drake's use of another client's funds to support the restaurant – and advised HCR to monitor all accounts related to the Restaurant on a least a quarterly basis to detect any misconduct.

10. Drake agreed not to accept an ownership interest in the Restaurant, and HCR permitted Drake to engage in the proposed outside activity of assisting in the management of the Restaurant. HCR did not determine the source of investments into the Restaurant and did not

engage in any additional monitoring of accounts related specifically to the Restaurant in light of Drake's agreement not to accept an ownership interest.

11. Drake obtained a 3.0% ownership interest in the Restaurant in January 2014.

Drake's Misappropriation of Client Funds to Support the Restaurant

12. The Restaurant encountered financial difficulties during 2014, and Drake misappropriated funds from his HCR clients to support it.

13. In February 2014, Drake misappropriated $75,000 from Client C, transferring the money directly from one of Client C's accounts under his management to the Restaurant's account under his management. The brokerage firm that acted as custodian of HCR's clients' accounts sent HCR a transmission verification report concerning the transfer, but because HCR was not specifically monitoring Restaurant-related accounts, it did not detect the improper transfer.

14. One week later, Client C's son-in-law asked Drake about the missing $75,000, and Drake falsely blamed a "clerical error" or "bonds that came due." Client C's son-in-law pressed Drake for a more coherent explanation and, after a lengthy email exchange, which Drake conducted using his HCR email address, Drake falsely explained that he had invested Client C's money and would return it with interest. For the next year, Drake repeatedly promised – and failed – to return Client C's money with interest.

15. In May 2014, Drake misappropriated $40,000 from Clients A and B to support the Restaurant, surreptitiously transferring the money from one of their non-Restaurant accounts to the Restaurant's account under his management. Clients A and B noticed the transfer and reprimanded Drake via email for transferring funds without their permission or authorization.

16. In June 2014, Drake misappropriated $100,000 from Client D, transferring the money from one of Client D's accounts under his management to one of the Restaurant's bank accounts. Shortly thereafter, Client D's financial manager noticed the missing money and emailed Drake for an explanation. In response, Drake falsely claimed that he had invested the money into a "pooled trust account" and sent the financial manager a number of misleading emails and fraudulent documents to support this false explanation, all of which he conducted using his HCR email address. HCR received a transmission verification report for the $100,000 transfer, but its monitoring did not detect any improper transfers related to the Restaurant.

Client Complaints about Drake's Misuse of Funds

17. In early February 2015, HCR received two contemporaneous complaints on behalf of Clients C and D concerning Drake's handling of their accounts.

18. On February 9, 2015, Client C's son-in-law complained to HCR about Drake's failure to return Client C's $75,000.

19. Within the next three days, Client D's attorney lodged a separate complaint with HCR, accusing Drake of failing to follow Client D's repeated instructions to liquidate her holdings and terminate her relationship with Drake and HCR. The complaint also included information

which put HCR on notice that Drake may have made improper transfers from Client D's account. Client D fired HCR shortly thereafter.

Failure to Supervise Drake and to Implement Policies and Procedures

20. At the time of Client C's and D's complaints, HCR's policies and procedures required a prompt, thorough, and fair review of all client complaints, and a prompt and fair response to each complaint. They also required HCR to monitor Drake's activities for potential violations of HCR's policies and procedures, as well as potential violations of the federal securities laws, and to monitor HCR's employees' emails.

21. Despite these policies, in response to each complaint, however, HCR did not reasonably investigate or address Drake's conduct. In each instance, HCR failed to follow up to learn what Drake had actually done to precipitate the complaint, relying excessively on Drake's false descriptions of his conduct.

22. By failing to investigate Drake's activities in response to client complaints, HCR also missed opportunities to learn about Drake's ongoing management-fee fraud, which HCR could have discovered by contacting Clients A and B in connection with Drake's outside business activities or searching Drake's emails for correspondence about the Restaurant. HCR employees never reviewed Drake's emails or documents specifically with a focus on the red flags raised about Drake's handling of client accounts, and HCR's periodic, compliance-related email reviews were not tailored to Drake's Restaurant-related activities or the potential misuse of client funds for outside business activities.

VIOLATIONS

23. As a result of the conduct described above, Respondent failed to engage in reasonable supervision of Drake within the meaning of Section 203(e)(6) of the Advisers Act, with a view to preventing Drake's violations of Sections 206(1) and 206(2) of the Advisers Act.

24. As a result of the conduct described above, Respondent willfully[1] violated Section 206(4) of the Advisers Act, Rule 206(4)-7 promulgated thereunder, which requires registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act.

HCR'S SELF-DISCLOSURE, COOPERATION, AND REMEDIAL EFFORTS

25. In determining to accept the Offer, the Commission considered Respondent's

[1] "Willfully," for purposes of imposing relief under Section 206(4) 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.)

self-disclosure, cooperation, and remedial efforts. Respondent voluntarily disclosed Jeremy Drake's misconduct to the Commission staff and to the United States Attorney's Office for the Central District of California and timely shared the facts developed during the course of HCR's internal investigation conducted in response to its discovery of Drake's misconduct.

26. Respondent's remedial actions included, among other things: (1) the retention of a new compliance consultant during the course of the Commission staff's investigation to review and address Respondent's compliance-related policies and procedures (the "Remedial Compliance Consultant"); (2) a voluntary payment of $300,000 to Clients A and B; (3) enhancing its internal controls and compliance functions; and (4) hiring a new chief compliance officer.

UNDERTAKINGS

27. Within ten (10) days of the issuance of the Order, to the extent Respondent has not already done so, Respondent shall pay $328,912.20 to Clients A and B.

28. Respondent shall not seek or receive indemnification, reimbursement, the assignment of any claim, or any other form of payment from Clients A and B for, or in consideration of, the payments referenced in paragraphs 26 and 27 of this Order.

29. For purposes of completing the undertakings set forth in this paragraph, Respondent undertakes to continue to retain, at its own expense, the services of the Remedial Compliance Consultant. Respondent further agrees to the following:

A. Within sixty (60) days of the issuance of the Order, to the extent Respondent has not already done so, Respondent will adopt and implement all recommendations included in the July 3, 2019 Memorandum Summarizing the Remedial Compliance Consultant's Recommendations to HCR; provided, however, that as to any recommendation that Respondent considers to be, in whole or in part, unduly burdensome or impractical, Respondent may submit in writing to the Remedial Compliance Consultant and the Commission staff a proposed alternative reasonably designed to accomplish the same objectives. Respondent shall then attempt in good faith to reach an agreement with the Remedial Compliance Consultant relating to each disputed recommendation. In the event Respondent and the Remedial Compliance Consultant are unable to agree on an alternative proposal within sixty (60) days of Respondent's written notice, Respondent will abide by the final determination of the Remedial Compliance Consultant with respect to any disputed recommendation. Within fifteen (15) days after the conclusion of the discussion of any disputed recommendation by Respondent and the Remedial Compliance Consultant, Respondent shall inform the Commission staff in writing of the final determination concerning any disputed recommendation. Within sixty (60) days after a final determination by the Remedial Compliance Consultant with respect to any disputed recommendation, Respondent shall adopt and implement the final recommendation by the Remedial Compliance Consultant.

B. After implementing all recommendations included in the July 3, 2019 Memorandum Summarizing the Remedial Compliance Consultant's Recommendations to HCR, Respondent will require the Remedial Compliance Consultant, no earlier than two hundred and

eighty (280) days and no later than three hundred and sixty (360) days after the issuance of this Order, to:

1. Conduct a review to assess whether Respondent is complying with its revised policies and procedures, and whether the revised policies and procedures are effective in achieving their stated purposes; and

2. Provide to Respondent additional recommendations for changes or improvements to the revised policies and procedures if needed to make the policies and procedures effective in achieving their stated purposes (the "Review Report"),

C. Within sixty (60) days after receiving the Review Report, to the extent Respondent has not already done so, Respondent will provide a copy of the Review Report to the Commission staff and adopt and implement all recommendations made in that report; provided, however, that as to any recommendation that Respondent considers to be, in whole or in part, unduly burdensome or impractical, Respondent may submit in writing to the Remedial Compliance Consultant and the Commission staff a proposed alternative reasonably designed to accomplish the same objectives. Respondent shall then attempt in good faith to reach an agreement with the Remedial Compliance Consultant relating to each disputed recommendation. In the event Respondent and the Remedial Compliance Consultant are unable to agree on an alternative proposal within sixty (60) days of Respondent's written notice, Respondent will abide by the final determination of the Remedial Compliance Consultant with respect to any disputed recommendation. Within fifteen (15) days after the conclusion of the discussion of any disputed recommendation by Respondent and the Remedial Compliance Consultant, Respondent shall inform the Commission staff in writing of the final determination concerning any disputed recommendation. Within sixty (60) days after a final determination by the Remedial Compliance Consultant with respect to any disputed recommendation, Respondent shall adopt and implement the final recommendation by the Remedial Compliance Consultant.

D. To ensure the independence of the Remedial Compliance Consultant, Respondent shall not have the authority to terminate the Remedial Compliance Consultant without prior written approval of the Commission's staff and shall compensate the Remedial Compliance Consultant and persons engaged to assist the Remedial Compliance Consultant for the performance of services related to Respondent's duties under the Order at their reasonable and customary rates.

E. Respondent will cooperate fully with the Remedial Compliance Consultant, including providing the Remedial Compliance Consultant with access to its files, books, records, and personnel (and the files, books, records and personnel of Respondent's affiliated entities), as reasonably requested for the Remedial Compliance Consultant's review, and obtaining the cooperation of respective employees or other persons under Respondent's control.

F. Respondent will not invoke the attorney-client privilege or any other doctrine or privilege to prevent the Remedial Compliance Consultant from transmitting any information, reports, or documents to the Commission staff.

G. Respondent will require the Remedial Compliance Consultant to enter into

an agreement that provides that, for the period of engagement, and for a period of two years following completion of the engagement, the Remedial Compliance Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Remedial Compliance Consultant will require that any firm with which it is affiliated or of which it is a member, and any person engaged to assist the Remedial Compliance Consultant in the performance of services related to Respondent's duties under the Order shall not, without prior written consent of the Commission's Los Angeles Regional Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

H. Respondent may apply to the Commission staff for an extension of the deadlines described above before their expiration and, upon a showing of good cause by Respondent, the Commission staff may, in its sole discretion, grant such extensions for whatever time period it deems appropriate.

I. Respondent will certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent will provide such evidence. Unless otherwise directed by the Commission staff, all reports, certifications, and other documents required by this Order to be provided to the Commission staff shall be sent to Alka Patel, Associate Regional Director, U.S. Securities and Exchange Commission, 444 S. Flower Street, Suite 900, Los Angeles, CA 90071.

30. The Commission's acceptance of Respondent's Offer of Settlement and entry of this Order shall not be construed as its approval of any policies or procedures reviewed by the Remedial Compliance Consultant or implemented based on the Remedial Compliance Consultant's recommendations.

IV.

In view of the foregoing, the Commission deems it appropriate 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 Section 206(4) of the Advisers Act, and Rule 206(4)-7 promulgated thereunder.

B. Respondent is censured.

C. Respondent shall, within 30 days of the entry of this Order, pay a civil money

penalty in the amount of $220,000 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. 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 HCR Wealth Advisors 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 Alka Patel, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Los Angeles Regional Office, 444 S. Flower Street, Suite 900, Los Angeles, CA 90071.

D. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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 shall comply with the undertakings referenced in Paragraph 30 above.

By the Commission.

Vanessa A. Countryman
Secretary