UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5762 / June 30, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20381

In the Matter of **SECURITIES AMERICA ADVISORS, 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 Securities America Advisors, Inc. ("Respondent" or "SAA").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement of SAA (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

1. This matter concerns SAA's failure to implement policies and procedures reasonably designed to prevent the misappropriation of funds from investment advisory client accounts. From November 2014 to March 2018 (the "Relevant Period"), SAA failed to implement policies and procedures for the review of automatically generated surveillance alerts after client disbursements had occurred. SAA also failed to implement reasonably designed policies and procedures for reviewing client disbursement requests for possible misappropriation before the disbursements occurred. As a result of these failures, Hector May ("May"), the owner of an independent state-registered investment adviser whose clients participated in certain SAA advisory programs, misappropriated, without SAA's detection, approximately $8 million from the SAA advisory accounts of at least fifteen SAA advisory clients.

2. Accordingly, SAA violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondent

3. SAA is a Nebraska corporation with its headquarters in La Vista, Nebraska. It is and, during the Relevant Period, was an investment adviser registered with the Commission. SAA is owned by Securities America Financial Corporation. SAA establishes investment advisory relationships with advisory clients through its own SAA employees and through remote independent state-registered investment advisory firms and independent state-registered investment advisers. Clients of independent state-registered investment advisers who receive investment advisory services from SAA sign a joint advisory agreement with SAA and their independent adviser, and open SAA advisory accounts. During the Relevant Period, Securities America Financial Corporation was a wholly owned subsidiary of Ladenburg Thalmann Financial Services Inc. ("Ladenburg Thalmann"), a financial services firm. On or about February 14, 2020, Advisor Group Holdings, Inc., which is owned by AG Parent Corporation, completed a merger with Ladenburg Thalmann, and Ladenburg Thalmann became a wholly owned subsidiary of Advisor Group Holdings, Inc.

Related Entity and Individual

4. Securities America, Inc. ("SAI") is a Nebraska corporation with its headquarters in La Vista, Nebraska. It is and, during the Relevant Period, was a broker-dealer registered with the Commission. Like SAA, SAI is owned by Securities America Financial Corporation, a wholly

[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.

owned subsidiary of Ladenburg Thalmann now owned by Advisor Group Holdings, Inc. SAI served as the introducing broker for SAA's advisory clients. SAA adopted SAI's policies and procedures for the protection of client assets and delegated to SAI their implementation on behalf of SAA's advisory clients.

5. Hector May ("May"), was a resident of Orangeburg, New York prior to his incarceration in August 2019. From 1998 to March 2018, May was the owner of Executive Compensation Planners, Inc. ("ECP"), an independent state-registered investment adviser, an investment adviser representative of ECP, and a registered representative of SAI. May's clients who participated in SAA advisory programs signed a joint advisory agreement with ECP and SAA, and opened SAA advisory accounts in which to make their investments. The Commission charged May in federal district court in December 2018 with securities fraud for misappropriating approximately $8.0 million from the SAA advisory accounts of at least fifteen of his clients. On December 27, 2018, a judgment was entered by consent. *See Securities and Exchange Commission v. Hector A. May, et al.*, Civil Action Number 7:18-CV-11668-VB (S.D.N.Y.). On February 14, 2019, the Commission instituted administrative proceedings against May and accepted his offer of settlement to associational and penny stock bars. May was also criminally charged for the same conduct, and, on December 13, 2018, May pled guilty to one count of conspiracy to commit wire fraud and one count of investment adviser fraud. *See United States v. Hector May*, Crim. Information No. 7:18-CR-00880-VB (S.D.N.Y.). May was sentenced to 156 months imprisonment on the first count and 60 months imprisonment on the second count, to run concurrently, and ordered to make restitution of $8,041,233.17.

Background of the Misappropriation

6. May encouraged certain of his advisory clients, who had opened SAA advisory accounts and invested assets in an SAA advisory program, to buy bonds away from these accounts, falsely claiming that he could obtain the bonds at a better price and avoid certain fees if they did so. He instructed the clients to transfer the necessary funds from their SAA advisory accounts to their personal bank accounts and to approve the transfer in the event they were contacted for confirmation. Once the funds arrived at the personal bank accounts, May told the clients to transfer the monies to an "ECP Custodial Account." Instead of making the bond investments, however, May diverted their assets for his own personal use. To hide the misappropriation, May fabricated and distributed to his defrauded clients phony advisory account statements that purported to contain all of their SAA advisory program investments including the fake bonds, their returns, and valuations.

SAA Failed to Implement Reasonably Designed Policies and Procedures to Safeguard Advisory Client Assets

7. During the Relevant Period, SAA adopted SAI's policies and procedures for safeguarding client assets from misappropriation ("SAA Policies"), thereby delegating to SAI responsibility for surveilling SAA advisory accounts. Three SAI units possessed primary responsibility for surveillance and identification of potential misappropriation of client assets: the Financial Investigations Unit ("FIU"), Operations Cashiering ("Cashiering"), and Operations Trade Support ("Trade Support").

Compliance Failures After Disbursement of Advisory Client Assets

8. The FIU utilized an automated Trade Monitor surveillance system that generated anti-money laundering ("AML") alerts based on certain preset rules and scenarios for potentially suspicious disbursements from client accounts. These AML alerts captured a variety of disbursements, including those that hit certain triggers based on the size of disbursements, size of disbursements relative to total account value, frequency of disbursements, and the percentage of disbursements to deposits.

9. SAA Policies required AML analysts in the FIU to review the disbursement alerts within two to ten days depending on the alert, analyze the alerts for activity that appeared suspicious or warranted additional research, and escalate activities they deemed suspicious for investigation. Among the factors to be assessed were the account profile (including age, investment objectives, occupation, held-away assets, and client risk profile attributes), previous transaction history, and account balances. Yet, despite multiple alerts accurately identifying disbursements from May's advisory clients that raised red flags centered on these criteria, AML analysts failed to conduct the required analysis. As a result, these alerts were never escalated and no AML cases were opened.

10. Between November 2014 and March 2018, the Trade Monitor system issued at least 55 alerts for outgoing disbursements to May's advisory clients that identified suspicious disbursements. Among the holders of these accounts were senior citizens ("Client A") and a company pension fund ("Client B") whose account profiles identified growth among their investment objectives and stated that they held no assets away from SAA. Yet, despite these factors and multiple large disbursements over time that were emptying these accounts, none of the 55 alerts were analyzed pursuant to SAA Policies. Consequently, they were not escalated for the opening of an AML investigation.

11. For example, in June 2014, Client A made a deposit of $700,000 into an SAA advisory account. From June, 2015 through December 2015, SAA disbursed $500,000 of the $700,000 back out to Client A even though the Trade Monitor system had generated eight AML alerts during this period for the excessive size and frequency of the disbursements. None of the alerts were analyzed pursuant to SAA Policies. As a result, they were not escalated for the opening of an AML investigation.

12. During the Relevant Period, Client B's disbursements triggered multiple alerts that were not analyzed, and, as a result, not escalated for an AML investigation. The Trade Monitor system captured a pattern of repeated deposits into Client B's account followed shortly thereafter by disbursements to Client B's corporate bank account. In one particular period, August and September 2016, account disbursements totaling $200,000 exceeded deposits and the account balance fell as low as $35,445. The Trade Monitor system generated multiple alerts at the time for both the size of the account disbursements and for the high percentage of disbursements to cash deposits. Yet the AML analysts did not analyze these alerts as required by SAA Policies. As a result, the analysts did not escalate any of them for investigation.

Compliance Failures Before Disbursement of Advisory Client Assets

Cashiering

13. Cashiering staff failed to implement SAA Policies regarding the review of outgoing client disbursements for possible misappropriation. During the Relevant Period, client signatures were required for disbursement requests as follows: once a signed form was on file for a disbursement request, multiple disbursements could be made to the same outside account using this signed form for a maximum of twelve months. After that, a new signed request was required. Yet, Cashiering staff failed to implement this signature policy. On January 22, 2015, Client A submitted a signed disbursement request for $50,000 that, according to SAA Policies, was effective for one year. Nonetheless, from February through December 2016, after the signed wire request was no longer in effect, Cashiering staff disbursed six outgoing wires of $50,000 apiece to Client A.

Trade Support

14. SAA Policies required the Trade Support staff to review outgoing wire requests in amounts of $50,000 or greater for possible misappropriation. First, SAA Policies required Trade Support staff to contact the client's adviser to confirm that she or her staff had verbally confirmed the wire request with the client. Next, they were required to speak to the client to confirm that the request had been made. Upon reaching the client, Trade Support staff was required to confirm the client's full name, last four digits of the client's social security number, date of birth, and the amount and destination of the wire. Finally, SAA Policies required Trade Support staff to administer a Verification ID test designed to confirm the client's identity. After the above was satisfactorily complete, Trade Support staff was required to complete the Representative Verification and Client Verification section of the brokerage disbursement verification checklist.

15. Trade Support staff failed to implement the SAA Policies above by failing to contact some of May's clients as required. For example, twenty outgoing wires to Client A met the threshold for a client call, but Trade Support made only eleven calls. In addition, disbursements were approved in at least five cases where Clients A and B were unable to identify the amount or the destination of the wire.

SAA's Violations

16. Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require investment advisers to adopt and implement written compliance policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and its rules.

17. SAA failed to implement its policies requiring AML analysts to review automatically generated surveillance alerts for suspicious client disbursements. SAA also failed to implement the signature requirements delegated to Cashiering and the call-out requirements for Trade Support.

18. Thus, SAA willfully[2] violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Undertakings

SAA has undertaken to:

19. Independent Consultant. Within 90 days of the entry of this Order, SAA shall retain the services of an independent consultant ("Independent Consultant") not unacceptable to the Commission staff. SAA shall require that the Independent Consultant conduct a comprehensive review of SAA's supervisory and compliance policies and procedures designed to detect and prevent the misappropriation of assets from client accounts, including (1) SAA's written policies and procedures to detect suspicious activity before the disbursement of funds from advisory client accounts, and (2) SAA's written policies and procedures to detect suspicious activity after the disbursement of funds from advisory client accounts, to ensure that these policies and procedures, and/or implementation thereof, comply with Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

20. SAA shall require the Independent Consultant to submit a written report to SAA and to Commission staff within 180 days of the entry of this Order (the "Report"). The Report shall describe in detail (1) the Independent Consultant's review, findings, conclusions, and recommendations; (2) any proposals made by SAA; and (3) a procedure for SAA to adopt and implement the recommended changes in or improvements to its policies and procedures, and/or implementation thereof.

a. Within ninety (90) days of receipt of the Report, SAA shall adopt and implement all recommendations contained in the report; provided, however, that within (30) days of SAA's receipt of the Report, SAA may, in writing, advise the Independent Consultant and the Commission staff of any recommendations that it considers unnecessary, unduly burdensome, impractical or inappropriate. With respect to any such recommendation, SAA need not adopt that

[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.'" *Wansover 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 on of the rules or Acts." *Tagger 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 provision, does 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).

recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose. As to any recommendation on which SAA and the Independent Consultant do not agree, such parties shall attempt in good faith to reach an agreement within thirty (30) days after SAA provides the written notice described above. In the event that SAA and the Independent Consultant are unable to agree on an alternative proposal, SAA and the Independent Consultant shall jointly confer with the Commission staff to resolve the matter. In the event that, after conferring with the Commission staff, SAA and the Consultant are unable to agree on an alternative proposal, SAA will abide by the recommendations of the Independent Consultant.

b. Within thirty (30) days of SAA's adoption of all of the recommendations in the Report, SAA shall certify in writing to the Independent Consultant and the Commission staff that it has adopted and implemented all of the Independent Consultant's recommendations in the Report. Unless otherwise directed by the Commission staff, all Reports, certifications and other documents required to be provided to the Commission staff shall be sent to Sandeep Satwalekar, Assistant Regional Director, U.S. Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, Suite 400, New York, NY 10281, or such other address as the Commission's staff may provide.

c. As part of its work with the Independent Consultant, SAA shall cooperate fully and provide the Independent Consultant with access to files, books, records, and personnel as are reasonably requested by the Independent Consultant for review. SAA shall bear all of the Independent Consultant's compensation and expenses.

d. SAA shall require the Independent Consultant to enter into an agreement that provides that, for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship with SAA, or any of its present or former affiliates, principals, directors, officers, employees, or agents. The agreement will also provide that the Independent Consultant will require that any firm with which the Independent Consultant is affiliated or of which the Independent Consultant is a member, and any person engaged to assist the Independent Consultant in performance of the Independent Consultant's duties under this Order, shall not, without prior consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with SAA, or any of its present or former affiliates, principals, directors, officers, employees, or agents for the period of the engagement and for a period of two years after the engagement.

e. The reports by the Independent Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law.

f. For good cause shown and upon timely application by SAA, the Commission staff may extend any of the procedural dates set forth in this undertaking. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

21. SAA shall 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 SAA agrees to provide such evidence. The certification and supporting material shall be submitted to Sandeep Satwalekar, Assistant Regional Director, U.S. Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, Suite 400, New York, NY 10281, or such other address as the Commission's staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

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

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

A. SAA 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 thereunder.

B. SAA is censured for violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

C. SAA shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $1,750,000 to the Securities and Exchange Commission. 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) SAA may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) SAA may make direct payment from a bank account via Pay.gov through the SEC website at https://www.sec.gov/payment options; or

(3) SAA 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 SAA 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 Sandeep Satwalekar, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 200 Vesey Street, Suite 400, New York, NY 10281, or such other address as Commission staff may provide.

D. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties described 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, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall he 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 he 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. SAA shall cooperate fully with the Commission staff and shall provide the Commission staff with files, records, and/or supporting documentation as the Commission staff may request for the purpose of any distribution from the Fair Fund.

F. SAA shall comply with the undertakings enumerated in paragraphs 19 through 21 above.

By the Commission.

Vanessa A. Countryman
Secretary