UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6423 / September 18, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21673

In the Matter of **SUMMIT PLANNING GROUP, INC and RICHARD URCIUOLI,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 203(e), 203(f) 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 Summit Planning Group, Inc. ("Summit") and pursuant to Sections 203(f) and 203(k) of the Advisers Act against Richard Urciuoli ("Urciuoli") (together, "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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 203(e), 203(f) 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 Respondents' Offers, the Commission finds that:

Summary

1. These proceedings arise out of breaches of the fiduciary duty of care and compliance failures by Summit, a registered investment adviser, and Urciuoli, Summit's sole owner and investment professional, who invested advisory client assets in a volatility linked exchange traded product—the iPath Series B S&P 500 VIX Short-Term Futures ETN ("VXX")—for extended periods of time without having a reasonable basis to do so. Of the 457 client accounts that Summit advised from July 30, 2021 and December 1, 2021, Urciuoli invested 293 of those accounts in a 3% position in VXX on July 30, 2021. Summit sold approximately half of the VXX position in those accounts 34 trading days later on September 17, 2021, and the remaining VXX position in each account 86 trading days later on December 1, 2021. This conduct was inconsistent with VXX's prospectus and pricing supplement, which stated that the product carried unique risks, was designed to be held for very short time periods, likely would incur costs if held for more than one trading session, and required frequent monitoring. The client accounts holding VXX collectively lost over $443,809 from those investments. Summit also failed to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules adopted thereunder.

2. As Summit's sole owner and investment adviser representative, President, and Chief Compliance Officer, Urciuoli was responsible for Summit's failures. Based on this conduct, and as described in further detail below, Summit and Urciuoli willfully violated Section 206(2) of the Advisers Act.[1] Summit also willfully violated, and Urciuoli caused Summit's violations of, Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

Respondents

3. **Summit Planning Group, Inc.** is a New York corporation with its principal place of business in East Syracuse, New York. Summit has been a registered investment adviser with the Commission since September 15, 2021. On its Form ADV, filed on March 17, 2023, Summit reported assets under management of approximately $101 million in over 450 client accounts for approximately 200 clients.

[1] "Willfully," for purposes of imposing relief under Section 203(e) or (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[ted]" material information from a required disclosure in violation of Section 207 of the Advisers Act).

4. **Richard Urciuoli**, age 70, is a resident of East Syracuse, New York. He is the founder, 100% owner, sole investment and compliance professional, President, and Chief Compliance Officer at Summit, where he provided investment advice to clients and received compensation for doing so.

Facts

5. Between July 30, 2021 and December 1, 2021 (the "Relevant Period"), Summit used its discretionary authority over client accounts to buy and hold VXX for time periods—between 34 and 86 trading days—that were inconsistent with the intended use of the product as described in its prospectus and pricing supplement, the primary disclosure documents for the product. VXX is a complex, futures-linked exchange-traded note ("ETN") designed to provide short-term exposure to a futures index derived from the Chicago Board Options Exchange Volatility Index ("VIX Index").

6. VXX carries significant risks as described in its offering materials, including in the pricing supplement to the VXX prospectus. Indeed, such warnings appeared in bold type on the first page of the document. For example, the pricing supplement dated April 23, 2021 (the "Pricing Supplement") to the prospectus dated August 1, 2019 (the "Prospectus") featured in bold, italicized type on the first page the following warnings, as well as others:

> ***The ETNs are intended to be trading tools for sophisticated investors to manage daily trading risks and are only suitable for a very short investment horizon.***

7. The first page of the Pricing Supplement also explained the potentially significant costs associated with holding a VXX position for more than a single day. As the Pricing Supplement explains, VXX offers exposure to futures contracts of specified maturities of the VIX Index and not direct exposure to the VIX Index itself. The Pricing Supplement warns that the nature of the VIX futures market "has historically resulted in a significant cost to 'roll' a position in the VIX futures contracts underlying the Indices." The underlying indices are rolling indices, the Pricing Supplement explains, "each of which rolls on a daily basis." As a result, according to the Pricing Supplement, the levels of the relevant future indices "may experience significant declines as a result of these costs, known as roll costs, especially over a longer period."

8. The Pricing Supplement also contained further warnings, including a notice under a heading in bold typeface entitled, "**If you hold Your ETNs as a Long Term Investment, It Is Likely That You Will Lose All or a Substantial Portion of Your Investment**." That section cautioned that VXX is "only suitable for a very short investment horizon." Furthermore, it explicitly noted that the long term expected value of "your ETNs is zero," and that if VXX is held as a long-term investment "it is likely that you will lose all or a substantial portion of your investment."

9. Urciuoli did not review either of these important disclosure documents—the Pricing Supplement or the Prospectus—before purchasing VXX for Summit's advisory clients. Of the 457 client accounts that Summit advised during the Relevant Period, Urciuoli invested 293, or 64% of

all client accounts, in a 3% VXX position on July 30, 2021. Despite the warnings in the Pricing Supplement explaining that VXX was designed to manage daily trading risks, that it should only be held for very short time periods, and the potentially significant costs associated with holding it for multiple trading sessions, Urciuoli held VXX in his customers' accounts for multiple weeks. He sold approximately half of the VXX position in each account 34 trading days later on September 17, 2021, and the remaining VXX position for those accounts 86 trading days later on December 1, 2021. During the Relevant Period, the client accounts holding VXX lost over $443,809 from Summit's VXX investments. Summit charged its clients $8,476.36 in fees in connection with the VXX investments. The fees earned were consistent with what Summit would have earned in connection with other investments. Although Urciuoli did not receive a fixed percentage of Summit's advisory fees, he owns 100% of Summit and received a salary, which Summit paid using advisory fees that it collected, including from the VXX investment.

10. Neither Summit nor Urciuoli had a reasonable basis to conclude that holding VXX for extended time periods was suitable for their clients. Urciuoli considered VXX as a hedge against potential downturns in both the equity and bonds markets in 2021, but he failed to give adequate consideration to how the product's disclosed risks could impact the investment's performance when held for extended periods. For instance, Summit and Urciuoli failed to demonstrate that they accounted for the significant risks associated with holding VXX for multiple days, including the roll costs described in the Pricing Supplement associated with holding a VXX position for more than a single day. Because Respondents failed to adequately consider the fundamental investment characteristics of VXX, Summit and Urciuoli invested advisory client money in VXX in a manner that was unsuitable.

11. During the Relevant Period, Summit also did not adopt or implement written policies and procedures that were reasonably designed to ensure that it understood the material features and risks of complex products, like VXX, before purchasing them for advisory clients. Although Summit permitted purchases of complex products like VXX, its policies and procedures did not address due diligence, suitability assessments for these products, or procedures for monitoring such investments.

12. Throughout the Relevant Period, Urciuoli was Summit's only investment and compliance professional. As the person responsible for all of Summit's investment and compliance decisions, Urciuoli caused Summit's failures to adopt or implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder.

Violations

13. As a result of the conduct described above, Respondents 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." Scienter is not required to establish a violation of Section 206(2), but rather a violation 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)).

14. As a result of the conduct described above, Summit willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which require a registered investment adviser to adopt and implement written policies and procedures reasonably designed to prevent violations, by the adviser or its supervised persons, of the Advisers Act and the rules adopted thereunder. A showing of negligence is sufficient to establish a violation of Section 206(4) of the Advisers Act or the rules thereunder; proof of scienter is not required. *Steadman*, 967 F.2d at 647. As Summit's only investment and compliance professional, Urciuoli caused Summit's violations of Advisers Act Section 206(4) and Rule 206(4)-7 thereunder.

Disgorgement and Civil Penalties

15. The disgorgement and prejudgment interest ordered in paragraph IV.C is consistent with equitable principles and does not exceed Respondents' net profits from their violations and will be distributed to harmed investors to the extent feasible. The Commission will hold funds paid pursuant to paragraph IV.C in an account at the United States Treasury pending distribution. Upon approval of the distribution final accounting by the Commission, any amounts remaining that are infeasible to return to investors, and any amounts returned to the Commission in the future that are infeasible to return to investors, may be transferred to the general fund of the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934.

IV.

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 Sections 203(e) and 203(k) of the Advisers Act with respect to Summit, and pursuant to Sections 203(f) and 203(k) of the Advisers Act with respect to Urciuoli, it is hereby ORDERED that:

A. Respondents Summit and Urciuoli 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 Rule 206(4)-7 promulgated thereunder.

B. Respondents Summit and Urciuoli are censured.

C. Respondents Summit and Urciuoli shall pay, jointly and severally, disgorgement of $8,476.36, prejudgment interest of $925.23, and civil penalties of $100,000.00, to the Securities and Exchange Commission. Payment shall be made in the following installments: (1) $49,401.59 within 14 days of entry of this Order; (2) $20,000 within 120 days of entry of this Order; (3) $20,000 within 210 days of entry of this Order; and (4) the remainder within 300 days after the entry of this Order. Payments shall be applied first to post order interest, which accrues pursuant to SEC Rule of Practice 600 and/or pursuant to 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 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:

i. Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

ii. 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

iii. 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 Summit Planning Group, Inc. and Richard Urciuoli 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 Tejal Shah, Associate Regional Director, New York Regional Office, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, New York, New York 10004.

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

V.

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 Respondent Urciuoli, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Urciuoli 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 Respondent Urciuoli 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