UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6442 / September 28, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21758

In the Matter of **OSAIC WEALTH, 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 Osaic Wealth, Inc. ("Osaic Wealth" 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 Respondent 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 arises out of the failure of Osaic Wealth, a registered investment adviser, to obtain verification by an independent public accountant of client funds and securities of which it had custody. From June 2017 to December 2022 (the "Relevant Period"), Osaic Wealth used a form agreement to govern certain aspects of the relationship among Osaic Wealth, its clients, and a particular clearing agent Osaic Wealth used (the "Clearing Agent"). Each of these agreements ("Customer Agreements") included a margin account agreement that contained language, required by the Clearing Agent, that permitted the Clearing Agent to accept, without inquiry or investigation, any instructions given by Osaic Wealth concerning these clients' accounts (the "Affected Accounts"). As a consequence of Osaic Wealth having this authority with respect to the client funds and securities in the Affected Accounts, Osaic Wealth had custody of these assets. Accordingly, because Osaic Wealth failed to obtain verification by actual examination of the client funds and securities in the Affected Accounts by an independent public accountant, Osaic Wealth violated Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, commonly referred to as the "custody rule."

Respondent

2. **Osaic Wealth**, a Delaware corporation with its principal place of business in Jersey City, NJ, is a dually registered investment adviser and broker-dealer. Osaic Wealth has been registered with the Commission as an investment adviser since 1997 and as a broker-dealer since 1988. Prior to June 21, 2023, Osaic Wealth was named Royal Alliance Associates, Inc. As of December 31, 2022, Osaic Wealth managed approximately $29.5 billion in regulatory assets under management. Osaic Wealth is a subsidiary of Osaic, Inc. (f/k/a Advisor Group, Inc.), a wholly-owned subsidiary of Osaic Holdings, Inc.

Facts

3. The custody rule requires that registered investment advisers who have custody of client funds or securities implement an enumerated set of requirements to prevent the loss, misuse, or misappropriation of those assets.

4. During the Relevant Period, the Clearing Agent served as clearing agent for more than 83,000[2] Osaic Wealth advisory clients' funds and securities under management. Certain aspects of the relationship among these Affected Accounts clients, Osaic Wealth, and the Clearing Agent were governed by the Customer Agreements.

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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.

[2] As of December 31, 2022.

5. Osaic Wealth included as part of its Customer Agreements a section that served as a margin account agreement, the language for which was required by the Clearing Agent. This section of the Customer Agreements stated, in relevant part:

> Until receipt from the Customer of written notice to the contrary, [the Clearing Agent] may accept from [Osaic Wealth], without inquiry or investigation, (i) orders for the purchase or sale of securities and other property on margin or otherwise, and (ii) any other instructions concerning said accounts.

6. All of the Customer Agreements included a margin account agreement with the above language during the Relevant Period. As of December 31, 2022, 313 Osaic Wealth advisory clients maintained margin accounts.

7. An investment adviser has custody of client assets if it holds, directly or indirectly, client funds or securities, or if it has the ability to obtain possession of those assets. *See* Rule 206(4)-2(d)(2). Custody includes "[a]ny arrangement . . . under which [an investment advisor is] authorized or permitted to withdraw client funds or securities maintained with a custodian upon [its] instruction to the custodian." *See* Rule 206(4)-2(d)(2).

8. An investment adviser who has custody of client assets must, among other things: (i) maintain clients' assets with a qualified custodian; (ii) notify the client in writing of accounts opened by the adviser at a qualified custodian on the client's behalf; (iii) have a reasonable basis for believing that the qualified custodian sends account statements at least quarterly to clients, except if the client is a limited partnership or limited liability company for which the adviser or a related person is a general partner, the account statements must be sent to each limited partner or member; and (iv) obtain verification of client funds and securities by actual examination each calendar year by an independent public accountant at a time chosen by the accountant without prior notice or announcement to the adviser. *See* Rule 206(4)-2(a).

9. By virtue of Osaic Wealth's authority under the Customer Agreements described above to give "any other instructions" concerning the Affected Accounts "without inquiry or investigation" by the Clearing Agent, which could include instructions by Osaic Wealth regarding the withdrawal of client funds or securities, Osaic Wealth had custody of the assets in the Affected Accounts under Rule 206(4)-2.

10. With respect to the Affected Accounts, Respondent failed to obtain verification of client funds and securities by annual actual examinations by an independent public accountant for the calendar years 2017 through 2022.

11. In August 2020, in connection with an ongoing examination of Osaic Wealth, the staff of the Commission's Division of Examinations expressed in writing "concerns" regarding the language contained in the Customer Agreements described above and stated that Osaic Wealth "appeared to have violated the Custody Rule." In November 2020, Osaic Wealth responded that it believed it was in compliance with the custody rule. On May 18, 2023, Osaic Wealth removed the language described above from its Customer Agreements. In August 2023, Osaic Wealth engaged an independent public accountant to verify by actual examination the

client funds and securities for accounts subject to the Customer Agreements during the calendar year 2023.

Violations

12. Section 206(4) of the Advisers Act prohibits an investment adviser from engaging in acts, practices or courses of business that are fraudulent, deceptive, or manipulative, as defined by the Commission in rules and regulations promulgated under the statute. Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act and the rules thereunder. *See SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992).

13. Among other things, Rule 206(4)-2 requires registered investment advisers that have custody of client funds or securities to have independent public accountants conduct a verification of those client funds and securities by actual examination at least once each calendar year. By failing to have such a surprise examination of these client funds and securities for which it had custody, Osaic Wealth willfully[3] violated Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to in Respondent Osaic Wealth's Offer.

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

A. Respondent Osaic Wealth 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)-2 promulgated thereunder.

B. Respondent Osaic Wealth is censured.

C. Osaic Wealth shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $100,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

[3] "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).

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 Osaic Wealth 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 Lee A. Greenwood, Assistant Regional Director, Asset Management Unit, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004.

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.

By the Commission.

Vanessa A. Countryman
Secretary