

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 100696 / August 14, 2024**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21992**

**In the Matter of**

**Great Point Capital, LLC,**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS  
PURSUANT TO SECTIONS 15(b) AND 21C  
OF THE SECURITIES EXCHANGE ACT OF  
1934, 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 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Great Point Capital, LLC (hereinafter, “Respondent” or “Great Point”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Respondent admits the facts set forth in Section III below, acknowledges that its conduct violated the federal securities laws, admits the Commission’s jurisdiction over it and the subject matter of these proceedings, and consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, 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<sup>1</sup> that:

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<sup>1</sup> 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.

## Summary

1. The federal securities laws impose recordkeeping requirements on broker-dealers to ensure that they responsibly discharge their crucial role in our markets. The Commission has long said that compliance with these requirements is essential to investor protection and the Commission's efforts to further its mandate of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

2. These proceedings arise out of the widespread and longstanding failure of Great Point personnel throughout the firm, including at senior levels, to adhere to certain of these essential requirements and Great Point's own policies. Using their personal devices, these Great Point personnel communicated both internally and externally by text messages, which were not an approved written communications platform ("off-channel communications").

3. From at least August 2019, Great Point personnel sent and received off-channel communications that were records required to be maintained under Exchange Act Rule 17a-4(b)(4). Respondent did not maintain or preserve the substantial majority of these written communications. Respondent's failures were firm-wide and involved personnel at various levels of authority throughout the organization. As a result, Respondent violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder.

4. Great Point's supervisors, who were responsible for supervising junior personnel, routinely communicated off-channel using their personal devices. In fact, managers and officers responsible for supervising junior personnel themselves failed to comply with Great Point's policies by communicating using non-Great Point approved methods on their personal devices about Great Point's broker-dealer business.

5. Great Point's widespread failure to implement a system of follow-up and review reasonably expected to determine whether personnel were following its policies and procedures that prohibit off-channel communications led to its failure to reasonably supervise its personnel within the meaning of Section 15(b)(4)(E) of the Exchange Act.

6. During the time period that Great Point failed to maintain and preserve off-channel communications that its personnel sent and received related to its broker-dealer business, Great Point received and responded to Commission subpoenas for documents and/or records requests in a number of Commission investigations. As a result, Great Point's recordkeeping failures likely impacted the Commission's ability to carry out its regulatory functions and investigate violations of the federal securities laws across these investigations.

7. Commission staff found Great Point's misconduct after commencing a risk-based initiative to investigate the use of off-channel and unpreserved communications at broker-dealers. Great Point has initiated a review of its recordkeeping failures and begun a program of remediation. As set forth in the Undertakings below, Great Point will retain an independent compliance consultant to review and assess Great Point's remedial steps relating to its recordkeeping practices, policies and procedures, related supervisory practices, and employment actions.

## **Respondent**

8. **Great Point Capital, LLC** is a Delaware limited liability company with its principal office in Chicago, Illinois, and is registered with the Commission as a broker-dealer.

### **Recordkeeping Requirements under the Exchange Act**

9. Section 17(a)(1) of the Exchange Act authorizes the Commission to issue rules requiring broker-dealers to make and keep for prescribed periods, and furnish copies of, such records as necessary or appropriate in the public interest, for the protection of investors or, with respect to the Exchange Act, otherwise in furtherance of the purposes of the Exchange Act.

10. The Commission adopted Rule 17a-4 under the Exchange Act pursuant to this authority. These rules specify the manner and length of time that the records created in accordance with Commission rules, and certain other records produced by broker-dealers, must be maintained and produced promptly to Commission representatives.

11. The rules adopted under Section 17(a)(1) of the Exchange Act, including Rule 17a-4(b)(4), require that broker-dealers preserve in an easily accessible place originals of all communications received and copies of all communications sent relating to the broker-dealer's business as such. These rules impose minimum recordkeeping requirements that are based on standards a prudent broker-dealer should follow in the normal course of business.

12. The Commission previously has stated that these and other recordkeeping requirements "are an integral part of the investor protection function of the Commission, and other securities regulators, in that the preserved records are the primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards." Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f), 17 C.F.R. Part 241, Exchange Act Rel. No. 44238 (May 1, 2001).

### **Great Point's Policies and Procedures**

13. Great Point maintained certain policies and procedures designed to ensure the retention of business-related records, including electronic communications, in compliance with the relevant recordkeeping provisions.

14. Great Point personnel were advised that the use of unapproved electronic communications methods, including on their personal devices, was not permitted, and they should not use personal email, chats or text messaging applications for business purposes.

15. Messages sent through Great Point's approved communications methods were monitored, subject to review, and, when appropriate, archived. Messages sent through unapproved communications methods, such as text messaging, and those sent from unapproved applications on personal devices, were not monitored, subject to review or archived.

16. Firm policies were designed to address supervisors' supervision of personnel training in the firm's communications policies and adherence to Great Point's books and

recordkeeping requirements. Great Point had procedures for all personnel, including supervisors, requiring annual self-attestations of compliance.

17. Great Point, however, failed to implement a system of follow-up and review reasonably expected to determine that all personnel, including supervisors, were following Great Point's policies. While permitting personnel to use approved communications methods, including on personal phones, for business communications, Great Point failed to implement sufficient monitoring to ensure that its recordkeeping and communications policies were being followed.

### **Great Point's Recordkeeping Failures Across Its Brokerage Businesses**

18. In September 2021, the Commission staff commenced a risk-based initiative to investigate whether broker-dealers were properly retaining business-related messages sent and received on personal devices. Great Point cooperated with the investigation by voluntarily interviewing a sampling of senior personnel and gathering and reviewing messages found on the individuals' personal devices. These personnel included senior leadership, such as principal officers and branch managers.

19. The Commission staff's investigation found pervasive off-channel communications at various seniority levels of Great Point. The investigation found that all personnel sampled had engaged in at least some level of off-channel communications. Overall, these personnel sent and received numerous off-channel communications, involving other Great Point personnel and external contacts in the securities industry. Within Great Point, a significant number of principal officers and branch managers participated in off-channel communications.

20. From at least August 2019, Great Point personnel sent and received off-channel communications that concerned the broker-dealer's business. For example, in September 2019, a Great Point manager exchanged off-channel messages with a registered representative regarding securities-related orders and trading. These messages related to Great Point's broker-dealer business as such.

### **Great Point's Failure to Preserve Required Records Potentially Compromised and Delayed Commission Matters**

21. Between August 2019 and the present, Great Point received and responded to Commission subpoenas for documents and/or records requests in numerous Commission investigations. By failing to maintain and preserve required records relating to its business, Great Point likely deprived the Commission of these off-channel communications in various investigations.

### **Great Point's Violations and Failure to Supervise**

22. As a result of the conduct described above, from at least August 2019 through the date of this Order, Great Point willfully<sup>2</sup> violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder.

23. As a result of the conduct described above, Great Point failed reasonably to supervise its personnel with a view to preventing or detecting certain of its supervised persons' aiding and abetting violations of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, within the meaning of Section 15(b)(4)(E) of the Exchange Act.

### **Great Point's Remedial Efforts**

24. In determining to accept the Offer, the Commission considered steps undertaken by Great Point prior to and after being approached by Commission staff, including revising its policies and procedures relating to the retention of off-channel communications, as well as cooperation afforded to the Commission staff.

### **Undertakings**

25. Prior to this action, Great Point enhanced its policies and procedures concerning the use of approved communications methods, including on personal devices, and began implementing changes to the technology available to its personnel. In addition, Great Point has undertaken to:

26. **Independent Compliance Consultant.**

a. Great Point shall retain, within thirty (30) days of the entry of this Order, the services of an independent compliance consultant ("Compliance Consultant") that is not unacceptable to the Commission staff. The Compliance Consultant's compensation and expenses shall be borne exclusively by Great Point.

b. Great Point will oversee the work of the Compliance Consultant.

c. Great Point shall provide to the Commission staff, within sixty (60) days of the entry of this Order, a copy of the engagement letter detailing the Compliance Consultant's responsibilities, which shall include a comprehensive compliance review as described below. Great Point shall require that, within ninety (90) days of the date of the engagement letter, the Compliance Consultant conduct:

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<sup>2</sup> "Willfully," for purposes of imposing relief under Section 15(b) of the Exchange Act "means no more than that the person charged with the duty knows what he is doing." See *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).

i. A comprehensive review of Great Point’s supervisory, compliance, and other policies and procedures designed to ensure that Great Point’s electronic communications, including those found on personal electronic devices, including without limitation, cellular phones (“Personal Devices”), are preserved in accordance with the requirements of the federal securities laws.

ii. A comprehensive review of training conducted by Great Point to ensure personnel are complying with the requirements regarding the preservation of electronic communications, including those found on Personal Devices, in accordance with the requirements of the federal securities laws, including by ensuring that Great Point personnel certify in writing on a quarterly basis that they are complying with preservation requirements.

iii. An assessment of the surveillance program measures implemented by Great Point to ensure compliance, on an ongoing basis, with the requirements found in the federal securities laws to preserve electronic communications, including those found on Personal Devices.

iv. An assessment of the technological solutions that Great Point has begun implementing to meet the record retention requirements of the federal securities laws, including an assessment of the likelihood that Great Point personnel will use the technological solutions going forward and a review of the measures employed by Great Point to track personnel usage of new technological solutions.

v. An assessment of the measures used by Great Point to prevent the use of unauthorized communications methods for business communications by its personnel. This assessment should include, but not be limited to, a review of Great Point’s policies and procedures to ascertain if they provide for any significant technology and/or behavioral restrictions that help prevent the risk of the use of unapproved communications methods on Personal Devices (e.g., trading floor restrictions).

vi. A review of Great Point’s electronic communications surveillance routines to ensure that electronic communications through approved communications methods found on Personal Devices are incorporated into Great Point’s overall communications surveillance program.

vii. A comprehensive review of the framework adopted by Great Point to address instances of non-compliance by Great Point personnel with Great Point’s policies and procedures concerning the use of Personal Devices to communicate about Great Point business in the past. This review shall include a survey of how Great Point determined which personnel failed to comply with Great Point policies and procedures, the corrective action carried out, an evaluation of who violated policies and why, what penalties were imposed, and whether penalties were handed out consistently across business lines and seniority levels.

d. Great Point shall require that, within forty-five (45) days after completion of the review set forth in sub-paragraphs 26.c.i. through 26.c.vii. above, the Compliance Consultant shall submit a detailed written report of its findings to Great Point and to the Commission staff (the "Report"). Great Point shall require that the Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Compliance Consultant's recommendations for changes in or improvements to Great Point's policies and procedures, and a summary of the plan for implementing the recommended changes in or improvements to Great Point's policies and procedures.

e. Great Point shall adopt all recommendations contained in the Report within ninety (90) days of the date of the Report; provided, however, that within forty-five (45) days after the date of the Report, Great Point shall advise the Compliance Consultant and the Commission staff in writing of any recommendations that Great Point considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Great Point considers unduly burdensome, impractical, or inappropriate, Great Point need not adopt such recommendation at that time, but shall propose in writing an alternative policy, procedure, or disclosure designed to achieve the same objective or purpose.

f. As to any recommendation concerning Great Point's policies or procedures on which Great Point and the Compliance Consultant do not agree, Great Point and the Compliance Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by Great Point and the Compliance Consultant, Great Point shall require that the Compliance Consultant inform Great Point and the Commission staff in writing of the Compliance Consultant's final determination concerning any recommendation that Great Point considers to be unduly burdensome, impractical, or inappropriate. Great Point shall abide by the determinations of the Compliance Consultant and, within sixty (60) days after final agreement between Great Point and the Compliance Consultant or final determination by the Compliance Consultant, whichever occurs first, Great Point shall adopt and implement all of the recommendations that the Compliance Consultant deems appropriate.

g. Great Point shall cooperate fully with the Compliance Consultant and shall provide the Compliance Consultant with access to Great Point's files, books, records, and personnel as are reasonably requested by the Compliance Consultant for review.

h. Great Point shall not have the authority to terminate the Compliance Consultant or substitute another compliance consultant for the initial Compliance Consultant, without the prior written approval of the Commission staff. Great Point shall compensate the Compliance Consultant and persons engaged to assist the Compliance Consultant for services rendered under this Order at their reasonable and customary rates.

i. For the period of engagement and for a period of two years from completion of the engagement, Great Point shall not (i) retain the Compliance Consultant for any other professional services outside of the services described in this Order; (ii) enter into any other professional relationship with the Compliance Consultant, including any employment, consultant, attorney-client, auditing or other professional relationship; or (iii) enter, without prior written consent of the Commission staff, into any such professional relationship with any of the Compliance Consultant's present or former affiliates, employers, directors, officers, employees, or agents acting in their capacity as such.

j. The Report by the Compliance Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the Report could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the Report 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) as otherwise required by law.

27. One-Year Evaluation. Great Point shall require the Compliance Consultant to assess Great Point's program for the preservation, as required under the federal securities laws, of electronic communications, including those found on Personal Devices, commencing one year after submitting the Report required by Paragraph 26.d above. Great Point shall require this review to evaluate Great Point's progress in the areas described in Paragraph 26.c.i through 26.c.vii above. After this review, Great Point shall require the Compliance Consultant to submit a report (the "One Year Report") to Great Point and the Commission staff and shall ensure that the One Year Report includes an updated assessment of Great Point's policies and procedures with regard to the preservation of electronic communications (including those found on Personal Devices), training, surveillance programs, and technological solutions implemented in the prior year period.

28. Reporting Discipline Imposed. For two years following the entry of this Order, Great Point shall notify the Commission staff as follows upon the imposition of any discipline imposed by Great Point, including, but not limited to, written warnings, loss of any pay, bonus, or incentive compensation, or the termination of employment, with respect to any personnel found to have violated Great Point's policies and procedures concerning the preservation of electronic communications, including those found on Personal Devices: at least 48 hours before the filing of a Form U-5, or within ten (10) days of the imposition of other discipline.

29. Internal Audit. In addition to the Compliance Consultant's review and issuance of the One Year Report, Great Point will also have its Internal Audit function conduct a separate audit(s) to assess Great Point's progress in the areas described in Paragraph 26.c.i through 26.c.vii above. After completion of this audit(s), Great Point shall ensure that Internal Audit submits a report to each Great Point and to the Commission staff.



30. Recordkeeping. Great Point shall preserve, for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of compliance with these undertakings.

31. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. 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.

32. Certification. Great Point 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 Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Amy S. Cotter, Assistant Regional Director, Division of Enforcement, Chicago Regional Office, 175 West Jackson Boulevard, Suite 1450, Chicago, Illinois 60604, or such other person as the Commission staff may request, 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 Respondent's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

- A. Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder.
- B. Respondent is censured.
- C. Respondent shall comply with the undertakings enumerated in paragraphs 26 to 32 above.
- D. Respondent shall pay a civil penalty in the amount of \$2,000,000 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).

Payment shall be made in the following installments:

1. Due within 30 days of the entry of this Order: \$250,000.00;
2. Due within 120 days of the entry of this Order: \$583,333.33;
3. Due within 240 days of the entry of this Order: \$583,333.33; and

4. The remainder within 360 days of the entry of this Order.

Payment 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 Great Point 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 Amy S. Cotter, Assistant Regional Director, Division of Enforcement, Chicago Regional Office, 175 West Jackson Boulevard, Suite 1450, Chicago, Illinois 60604.

E. 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, the 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