

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101061 / September 17, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6705 / September 17, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22138

In the Matter of

NEPC, LLC

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 21C OF
THE SECURITIES EXCHANGE
ACT OF 1934 AND SECTION 203(e)
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 Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(e) of the Investment Advisers Act of 1940 (“Advisers Act”), against NEPC, LLC (“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 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 Section 21C of the Securities Exchange Act of 1934 and Section 203(e) 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 that:

Summary

From at least December 2019 through the present, Respondent, a registered investment adviser, has had investment discretion over at least \$100 million of reportable securities and was therefore obligated to file quarterly Forms 13F beginning by at least February 2020. However, Respondent failed to file Forms 13F until February 2024.

From at least December 2019 through the present, Respondent met the large trader definition under Section 13(h) of the Exchange Act and Rule 13h-1 thereunder and was required to file an initial Form 13H and annual Forms 13H and amendments as appropriate thereafter. However, Respondent failed to file an initial Form 13H until March 2024.

Respondent

1. Respondent, a limited liability company with its principal place of business in Boston, Massachusetts, is an investment adviser registered with the Commission. Respondent is an “institutional investment manager” as defined in Section 13(f) of the Exchange Act and a “large trader” as defined in Section 13(h) of the Exchange Act. Respondent is an independent, full-service investment consulting firm. As of April 29, 2024, Respondent had total regulatory assets under management of \$95 billion.

Background

2. Section 13(f)(1) of the Exchange Act and Rule 13f-1 thereunder require that institutional investment managers file Forms 13F with the Commission on a quarterly basis if they exercise investment discretion over “Section 13(f) Securities” having an aggregate fair market value of at least \$100 million. Section 13(f) Securities are equity securities of a class described in Rule 13f-1(c) under the Exchange Act. A list of these securities - called the Official List of Section 13(f) Securities - is available on the Commission’s website.¹ The Official List of Section 13(f) Securities primarily includes U.S. exchange-traded stocks (*e.g.*, NYSE, AMEX, NASDAQ), shares of closed-end investment companies, and shares of exchange-traded funds (ETFs). Certain convertible debt securities, equity options, and warrants are on the Official List. Pursuant to Rule 13f-1(b), an investment manager is deemed to exercise discretion over all accounts for which any person or entity under the control of the investment manager exercises investment discretion. Form 13F requires such institutional investment managers, among other things, to disclose to the Commission the fair market value of its Section 13(f) Securities under management. Forms 13F

¹ <http://www.sec.gov/divisions/investment/13flists.htm>.

filed with the Commission are available to the public on the Commission’s website.

3. One Congressional purpose in enacting Section 13(f)(1) of the Exchange Act was to create “a central depository of historical and current data about the investment activities of institutional investment managers” to assist investors and government regulators. S. Rep. No. 94-75, 94th Cong., 2d Sess. 82-85 (1975).

4. Section 13(h) of the Exchange Act and Rule 13h-1 promulgated thereunder apply to “large traders,” defined as market participants that exercise investment discretion and effect transactions in a substantial amount of national market system (“NMS”) securities,² as measured by volume or market value. Persons whose transactions in NMS securities during any calendar day equal or exceed 2 million shares or \$20 million, or whose transactions during any calendar month equal or exceed 20 million shares or \$200 million must self-identify to the Commission on Form 13H. Large traders are obligated to file an initial Form 13H promptly after first effecting transactions equal to or greater than the large trader threshold. *See* Rule 13h-1(b)(1)(i). Following an initial filing, large traders are required to submit an annual filing within 45 days of the end of each full calendar year. *See* Rule 13h-1(b)(1)(ii). If any information on the Form 13H becomes inaccurate, a large trader must file an amended Form 13H promptly after the end of the calendar quarter in which the information became inaccurate. *See* Rule 13h-1(b)(1)(iii). Rule 13h-1 facilitates the Commission’s ability to assess the impact of large trader activity on the securities markets, to reconstruct trading activity following periods of unusual market volatility, and to analyze significant market events for regulatory purposes.

Facts

5. Beginning on the last trading day of December 2019, Respondent exercised investment discretion over Section 13(f) Securities with a fair market value of at least \$100 million.

6. Because Respondent exercised investment discretion over at least \$100 million worth of Section 13(f) Securities on the last trading day of at least one month in 2019, Respondent was obligated to disclose its 2019 year-end holdings of Section 13(f) Securities by filing a Form 13F with the Commission within 45 days of December 31, 2019.

7. Subsequently, Respondent’s holdings of Section 13(f) Securities continued to be at least \$100 million. Thus, from at least February 2020 until the present, Respondent has had an obligation to file Forms 13F on a quarterly basis. Respondent, however, failed to file any Forms 13F prior to February 2024.

8. On February 14, 2024, Respondent filed its first Form 13F, for the quarter ending December 31, 2023. That filing showed that, as of December 31, 2023, Respondent held positions

² NMS securities refer to “any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.” 17 CFR 242.600(b)(64). The term refers generally to exchange-listed securities, including equities and options.

in Section 13(f) Securities with a total market value of approximately \$1.8 billion.

9. In March 2024, Respondent filed sixteen Forms 13F, which covered the period from the quarter ending December 31, 2019, to the quarter ending September 30, 2023, inclusive.

10. By no later than December 2019, Respondent had transacted in NMS securities equal to or exceeding 2 million shares or \$20 million during any calendar day, or 20 million shares or \$200 million during any calendar month, qualifying it as a “large trader” under Section 13(h) of the Exchange Act and Rule 13h-1 thereunder.

11. Because the Respondent met the definition of “large trader,” Respondent was obligated to file an initial Form 13H with the Commission promptly after qualifying.

12. From no later than December 2019 through March 2024, Respondent met the threshold to be considered a “large trader.” Respondent was obligated to file annual filings within 45 days of the end of each full calendar year in which it was a large trader; it was also required to file amendments for any quarter in which information required by the form changed. Respondent, however, failed to file any Forms 13H prior to March 2024.

13. In March 2024, Respondent self-reported to the Commission’s staff its failure to file Forms 13H.

14. On March 13, 2024, Respondent filed an initial Form 13H, identifying it as a large trader.

Violations

15. As a result of the conduct described above, Respondent willfully³ violated Section 13(f)(1) of the Exchange Act and Rule 13f-1 thereunder by failing to file Forms 13F from the quarter ending December 31, 2019, to the quarter ending September 30, 2023.

16. Also as a result of the conduct described above, Respondent violated Section 13(h) of the Exchange Act and Rule 13h-1 thereunder by failing to file Forms 13H.

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). 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).

Respondent's Self-Report, Cooperation, and Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent. The Commission also considered Respondent's self-reporting of its violations of Section 13(h) of the Exchange Act and Rule 13h-1 thereunder and associated cooperation afforded to the Commission staff.

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 Section 21C of the Exchange Act and Section 203(e) 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 Sections 13(f)(1) and 13(h) of the Exchange Act and Rules 13f-1 and 13h-1 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 \$725,000 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). 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 6
500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying NEPC, LLC 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 Nicholas Heinke, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 1961 Stout Street, Suite 1700, Denver, CO 80294.

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.

D. Respondent acknowledges that the Commission is not imposing a civil penalty for its violation of Section 13(h) of the Exchange Act and Rule 13h-1 thereunder based upon its self-reporting, cooperation, and remediation in a Commission investigation. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Vanessa A. Countryman

Secretary