UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6127 / September 15, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21080

In the Matter of **ASSET MANAGEMENT GROUP OF BANK OF HAWAII,** **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 Asset Management Group of Bank of Hawaii ("Asset Management Group" 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 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:

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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.

Summary

1. These proceedings involve violations of the Commission's "pay-to-play" rule for investment advisers by Respondent Asset Management Group, an investment adviser. Rule 206(4)-5, promulgated under Section 206(4) of the Advisers Act, is a prophylactic rule designed to address pay-to-play abuses involving campaign contributions made by certain investment advisers or their covered associates to government officials who are in a position to influence the selection of investment advisers to manage government client assets, including the assets of public pension funds and other public entities. Among other things, Rule 206(4)-5 prohibits certain investment advisers from providing investment advisory services for compensation to a government client for two years after the adviser or certain of its executives or employees (known as covered associates) makes a campaign contribution to certain elected officials or candidates who can influence the selection of certain investment advisers.

2. In July 2018, an officer of the Bank of Hawaii made a campaign contribution to an incumbent for elected office in Hawaii, which office had influence over selecting investment advisers for a state university in Hawaii. Within three months of that contribution, the officer became an indirect supervisor of Respondent's solicitors of investment advisory services and, accordingly, became a covered associate of Respondent. Within two years after this contribution, Respondent provided advisory services for compensation to the state university. By providing these advisory services for compensation within two years after the contribution, Respondent violated Section 206(4) of the Advisers Act and Rule 206(4)-5 thereunder.

Respondent

3. Asset Management Group of Bank of Hawaii ("Asset Management Group") is a separately identifiable department of the Bank of Hawaii and is headquartered in Honolulu, Hawaii. Asset Management Group is registered with the Commission as an investment adviser, was registered during the relevant time period, and reported assets under management of approximately $1.2 billion in its most recent ADV filing on March 28, 2022.

Other Relevant Entity

4. Bank of Hawaii is a regional commercial bank headquartered in Honolulu, Hawaii. The Bank of Hawaii is a subsidiary of the Bank of Hawaii Corporation, a publicly traded corporation and bank holding company headquartered in Honolulu, Hawaii. The Bank of Hawaii Corporation's securities are registered under Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") and are listed on the New York Stock Exchange under the ticker "BOH."

Background

5. Since 2007, Asset Management Group has provided investment advisory services to various investment accounts maintained by the University of Hawaii. The University of Hawaii is governed by the Regents of the University of Hawaii ("Regents").

6. On July 26, 2018, an officer of the Bank of Hawaii made a $1,000 campaign contribution to the Governor of Hawaii.[2] Between September 2018 and October 2019, this officer was the head of the Bank of Hawaii's consumer banking segment, which oversaw Asset Management Group. As the head of this segment, this officer indirectly supervised Asset Management Group's solicitors of investment advisory services. Therefore, this officer was a covered associate[3] of Asset Management Group between September 2018 and October 2019, when this officer supervised employees who solicited advisory business for Asset Management Group. The officer's contribution triggered the "look back" provision of the Rule. Specifically, under Rule 206(4)-5(b)(2), contributions made six months (or two years if the covered associate solicited advisory business) before a person becomes a covered associate are covered by Rule 206(4)-5.

7. The office of Governor of Hawaii had the ability to influence the selection of investment advisers for the University of Hawaii. Specifically, the Governor of Hawaii appoints all 11 members of the Regent's board, which has influence over selecting investment advisers for the University of Hawaii.

8. During the 21 months after the officer became a covered associate, Respondent continued to provide investment advisory services for compensation to the University of Hawaii. Asset Management Group was prohibited from receiving advisory fees from the Regents for 21 months after the officer became a covered associate in September 2018.

9. Advisers Act Rule 206(4)-5(a)(1) prohibits any investment adviser registered with the Commission, investment adviser required to be registered with the Commission, foreign private adviser, or exempt reporting adviser from providing investment advisory services for

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[2] Rule 206(4)-5 has a *de minimis* exception, which permits covered associates to make aggregate contributions without triggering the two-year time out of up to $350, per election, to an elected official or candidate for whom the covered associate is entitled to vote, and up to $150, per election, to an elected official or candidate for whom the covered associate is not entitled to vote. See Rule 206(4)-5(b)(1).

[3] Covered associates are defined to include: (i) any general partner, managing member or executive officer, or other individual with a similar status or function; (ii) any employee who solicits a government entity for the investment adviser and any person who supervises, directly or indirectly, such employee; and (iii) any political action committee controlled by the investment adviser or by any of its covered associates. See Rule 206(4)-5(f)(2). The definition of covered associate includes all supervisors of solicitors that solicit government entities. See Political Contributions by Certain Investment Advisers, Advisers Act Release No. 3043, p.53 (July 1, 2010), 2010 SEC LEXIS 2164.

compensation to a government entity[4] within two years after a contribution to an official[5] of a government entity made by the investment adviser or any covered associate of the investment adviser. Advisers Act Rule 206(4)-5 does not require a showing of *quid pro quo* or actual intent to influence an elected official or candidate.

10. As a state university system or instrumentality of a state government, the University of Hawaii was a government entity as defined in Advisers Act Rule 206(4)-5(f)(5). The contributor was a covered associate of Respondent as defined in Advisers Act Rule 206(4)-5(f)(2). The individual who received the contribution was an official as defined in Advisers Act Rule 206(4)-5(f)(6) of a government entity because the office the person was associated with or sought to become associated with had authority either to influence the hiring of investment advisers by the government entity or to appoint people who could influence the hiring of investment advisers by the government entity.

11. Under Advisers Act Rule 206(4)-5, the contribution triggered a two-year "time-out" on Respondent providing advisory services for compensation to the University of Hawaii. During the two years after the contribution (starting when the officer became a covered associate), Respondent continued to provide advisory services for compensation to the University of Hawaii and, therefore, received advisory fees attributable to providing investment advisory services to the University of Hawaii.

Violations

12. As a result of the conduct described above, Respondent Asset Management Group willfully[6] violated Section 206(4) of the Advisers Act and Rule 206(4)-5 thereunder, which makes it unlawful for any investment adviser registered (or required to be registered) with the

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[4] See Rule 206(4)-5(f)(5).

[5] "Official" includes any person who, at the time of the relevant contribution, was an incumbent, candidate or successful candidate for elective office of a government entity if the office is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity or has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity. See Rule 206(4)-5(f)(6).

[6] "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).

Commission, or unregistered in reliance on the exemption available under Section 203(b)(3) of the Advisers Act, or that is an exempt reporting adviser, to provide investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by the investment adviser or any covered associate of the investment adviser.

IV.

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

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

A. Respondent Asset Management Group 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)-5 thereunder.

B. Respondent Asset Management Group is censured.

C. Respondent Asset Management Group shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of $45,000 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
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Asset Management Group of Bank of Hawaii as the 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 LeeAnn Ghazil Gaunt, Chief, Public Finance Abuse Unit, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, 24th Floor, Boston, MA 02110.

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