

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5945 / January 13, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20702

In the Matter of

**CMG CAPITAL
MANAGEMENT GROUP, 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 CMG Capital Management Group, Inc. (“CMG” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“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 that:

Summary

1. This matter arises from CMG's failure to adopt and implement policies and procedures reasonably designed to prevent false or misleading advertisements concerning the hypothetical, backtested performance of the firm's proprietary algorithmic trading strategies and to preserve advertisements promoting its trading strategies.

2. Between April 2017 and July 2018, CMG advertised hypothetical, backtested performance results for its CMG Opportunistic All Asset Strategy (the "OAAS") without disclosing the differences between the funds and other products used in the OAAS backtest and the funds considered for inclusion in client portfolios by the actual, "live" version of the strategy.

3. During this timeframe, CMG maintained written policies requiring the firm to comply with Commission rules prohibiting the distribution of advertisements containing any untrue statement of a material fact, or which are otherwise false or misleading. Notwithstanding these policies, CMG failed to adopt and implement adequate policies and procedures reasonably designed to prevent the distribution of false or misleading advertisements marketing the hypothetical, backtested performance results of trading strategies such as the OAAS, thereby violating Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

4. CMG also failed to preserve certain OAAS advertisements, thereby violating Section 204(a) of the Advisers Act and Rule 204-2(a)(11) thereunder.

Respondent

5. CMG is a Pennsylvania corporation headquartered in Malvern, Pennsylvania. The firm has been registered with the Commission as an investment adviser since March 1993. On its Form ADV dated March 31, 2021, CMG reported regulatory assets under management of approximately \$230 million.

Background

CMG Failed to Adopt and Implement Reasonably Designed Policies and Procedures Regarding its Advertising of Hypothetical, Backtested Performance Results

6. CMG maintained a written policy recognizing the firm's obligation to comply with Rule 206(4)-1 under the Advisers Act, including the Rule's prohibition on publishing, circulating, or distributing advertisements that contain any untrue statement of a material fact, or which are otherwise false or misleading. The firm also maintained a written policy requiring it to comply with Commission rules and guidance when incorporating firm performance data into its marketing materials.

7. Notwithstanding the foregoing, CMG failed to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder concerning advertising. For example, between April 2017 and July 2018, while marketing the

hypothetical, backtested performance results of the OAAS, CMG had not adopted and implemented policies or procedures specifically addressing the preparation, presentation, and disclosure of hypothetical, backtested performance results.

CMG Omitted Disclosures from Advertisements Marketing the Hypothetical, Backtested Performance Results of the OAAS

8. Between April 2017 and July 2018, CMG prepared “tear sheets” advertising hypothetical, backtested performance results for the OAAS. These advertisements were published on CMG’s public website and provided to third-party advisers.

9. In these advertisements, the firm failed to disclose certain dissimilarities between the OAAS backtest and the live strategy. Among other things, the backtest and the live strategy relied on different securities when constructing a model portfolio, and a small number of the funds used in the backtest were not adequately correlated with the securities they replaced in the live strategy.

10. CMG’s failure to adopt and implement reasonably designed policies and procedures created a risk that the firm’s advertising of hypothetical, backtested performance results would contain an untrue statement of a material fact, or be otherwise false or misleading.

CMG Failed to Preserve Copies of Certain OAAS Advertisements

11. Between January 2016 and June 2016, CMG prepared “tear sheets” advertising historical performance results for the OAAS. These advertisements were published on CMG’s public website and provided to third-party advisers. As such, they were distributed, directly or indirectly, to ten or more persons.

12. CMG failed to preserve copies of these advertisements.

Violations

13. Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require a registered investment adviser to adopt and implement written compliance policies and procedures reasonably designed to prevent violations by the investment adviser and its supervised persons of the Advisers Act and rules thereunder. As a result of the conduct described above, CMG willfully¹ violated Section 206(4) and Rule 206(4)-7.

¹ “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

14. Section 204(a) of the Advisers Act and Rule 204-2(a)(11) thereunder require that investment advisers registered with the Commission keep certain books and records. During the relevant timeframe, Rule 204-2(a)(11) required such advisers to retain “[a] copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons” As a result of the conduct described above, CMG willfully violated Section 204(a) and Rule 204-2(a)(11).

Remedial Efforts

15. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent. In particular, CMG voluntarily adopted a policy prohibiting the use of hypothetical, backtested performance results in its advertising materials.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in CMG’s Offer.

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

A. CMG cease and desist from committing or causing any violations and any future violations of Sections 204(a) and 206(4) of the Advisers Act and Rules 204-2(a)(11) and 206(4)-7 promulgated thereunder.

B. CMG is censured.

C. Respondent shall pay a civil money penalty of \$70,000 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) \$20,000 within 10 days of the entry of this Order;
- (2) \$20,000 within 180 days of the entry of this Order;
- (3) \$15,000 within 270 days of the entry of this Order; and
- (4) \$15,000, plus any additional interest due, within 360 days of the entry of this Order.

Payments 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

establish that a person has “willfully omit[ted]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

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 CMG 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 Brendan P. McGlynn, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 1617 JFK Blvd., Suite 520, Philadelphia, PA 19103.

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