

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101187 / September 25, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22202

In the Matter of

Vistia 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 Vistia Capital, LLC (“Vistia Capital” 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 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 finds¹ that:

Summary

1. This matter involves Vistia Capital's failure to file with the Commission and to deliver to retail investors a Form CRS that complies with the requirements of Rule 17a-14 under the Exchange Act. After hiring a financial professional with disciplinary history reported on Item 14A of Form U4 in August 2021, Vistia Capital was required to update its Form CRS within 30 days to disclose that one of its financial professionals had disciplinary history but failed to do so in a timely manner. Vistia Capital did not correct its Form CRS's legal or disciplinary history disclosure until October 18, 2023. As a result, Vistia Capital violated Section 17(a)(1) of the Exchange Act and Rule 17a-14 thereunder.

Respondent

2. Vistia Capital is a Delaware limited liability company with its principal place of business in Castle Rock, Colorado. Vistia Capital has been registered with the Commission as a broker-dealer pursuant to Section 15 of the Exchange Act since June 15, 2021. Vistia Capital offers services to retail investors.

Facts

3. On June 5, 2019, the Commission adopted Form CRS and rules creating new requirements for Commission-registered broker-dealers offering services to a retail investor.² *See Form CRS Relationship Summary; Amendments to Form ADV*, Exchange Act Release No. 86032, Advisers Act Release No. 5247 (June 5, 2019), 84 Fed. Reg. 33,492 (July 12, 2019) ("*Form CRS Adopting Release*").

4. *The Form CRS Filing Requirement.* Rule 17a-14 under the Exchange Act requires all Commission-registered broker-dealers offering services to a retail investor ("Retail BDs") to electronically file on the Central Registration Depository ("Web CRD") operated by the Financial Industry Regulatory Authority, Inc. ("FINRA") an initial Form CRS satisfying the requirements of Rule 17a-14 no later than June 30, 2020. For Retail BDs that file an application for registration with the Commission or have an application for registration pending with the Commission on or after June 30, 2020, the Retail BD must file its Form CRS by no later than the date that its registration application becomes effective. *See* Rule 17a-14(f)(2).

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 For purposes of Form CRS, the term "retail investor" means "a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family or household purposes." Rule 17a-14(e)(2) under the Exchange Act.

5. *The Form CRS Delivery Requirement.* Rule 17a-14(c) under the Exchange Act requires each Retail BD to deliver its current Form CRS to each retail investor. Rule 17a-14(c)(3) requires each Retail BD to post its current Form CRS prominently on its website, if it has one, in a location and format that is easily accessible to retail investors.

6. *The Form CRS Updating Requirement.* Rule 17a-14(b)(3) under the Exchange Act requires a Retail BD to amend its Form CRS as required by the instructions in the form. In turn, the General Instructions to Form CRS specify that a Retail BD must update and file its Form CRS within 30 days whenever any information in the form becomes materially inaccurate. The filing must include an exhibit highlighting changes required by General Instruction 8.C. In addition, a Retail BD must communicate any changes in the updated relationship summary to retail investors who are existing clients or customers within 60 days after the updates are required to be made and without charge. A Retail BD can make the communication by delivering the amended relationship summary or by communicating the information through another disclosure that is delivered to the retail investor. *See* Instructions to Form CRS, General Instructions 8.A. and 8.B. (Sept. 2019).

7. Rule 17a-14(b)(1) under the Exchange Act requires a Retail BD to prepare its Form CRS by following the instructions in the form. The Instructions to Form CRS identify specific information and language to be included in Form CRS. *See* Instructions to Form CRS (Sept. 2019). General Instruction 2.B. of Form CRS requires all the information in a Retail BD's Form CRS to be true and prohibits omission of any material facts necessary to make the disclosures required by the Instructions and applicable Item, in light of the circumstances under which they were made, not misleading.

8. Item 4 of the Instructions to Form CRS requires a Retail BD to disclose the legal or disciplinary history of the firm and its financial professionals. Specifically, the Retail BD must provide a "Yes" or "No" answer to the question "Do you or your financial professionals have legal or disciplinary history?" and direct the retail investor to visit Investor.gov/CRS for a free and simple search tool to research the Retail BD and its financial professionals. The Retail BD must answer "Yes" if it or any of its financial professionals currently disclose, or are required to disclose (1) disciplinary information in Item 11 of Part 1A or Item 9 of Part 2A of Form ADV; (2) legal or disciplinary history in Items 11A–K of Form BD; or (3) disclosures in Items 14A–M on Form U4, Items 7A or 7C–F of Form U5, or on Form U6, except to the extent such information is not released to BrokerCheck pursuant to FINRA Rule 8312. *See* Instructions to Form CRS, Item Instructions, Item 4 (Sept. 2019); *see also Form CRS Adopting Release*, 84 Fed. Reg. at 33,537–38.

9. Vistia Capital became a broker-dealer registered with the Commission on June 15, 2021. It filed its initial Form CRS with the Commission and delivered the form to its existing retail customers on July 12, 2021. Therein, Vistia Capital responded "No" to the question "Do you or your financial professionals have legal or disciplinary history?"

10. Vistia Capital did not timely amend its Form CRS to disclose that one of its financial professionals had disciplinary history as required by Rule 17a-14(b)(1). As of at least August 20, 2021, Vistia Capital employed a financial professional with disciplinary history required to be disclosed under Item 14A of Form U4. Vistia Capital filed a Form U4 on behalf of

the financial professional disclosing the disciplinary history on August 20, 2021, but failed to file an updated Form CRS within 30 days, post an updated Form CRS on its website, or communicate the change to its existing retail customers within 60 days as set forth in the General Instructions to Form CRS. Further, another Vistia Capital financial professional had a legal or disciplinary event in April 2023 that was required to be disclosed under Item 14I of Form U4. Vistia Capital did not update its Form CRS to respond “Yes” in the legal or disciplinary history disclosure required by Item 4 of Form CRS until October 2023, after it received a deficiency letter from the Commission’s Division of Examinations. On or about October 18, 2023, Vistia Capital filed its updated Form CRS with the Commission, delivered the updated Form CRS to existing retail customers, and posted the updated Form CRS on its website.

Violations

11. As a result of the conduct described above, Vistia Capital willfully³ violated Section 17(a)(1) of the Exchange Act and Rule 17a-14 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Vistia Capital’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)(1) of the Exchange Act and Rule 17a-14 thereunder.

B. Respondent is censured.

C. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$60,000 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 Exchange Act. 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:

³ “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.” *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).

- (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 Vistia Capital 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 Stacy L. Bogert, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549 or such other person or address as the Commission staff may provide.

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