UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6717 / September 24, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22162

In the Matter of **FOCUSED WEALTH MANAGEMENT, 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 Focused Wealth Management, Inc. ("FWM" or "Respondent").

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 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:

Summary

1. The federal securities laws impose recordkeeping requirements on registered investment advisers 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 FWM personnel throughout the firm, including at senior levels, to adhere to certain of these essential requirements and the firm's own policies and procedures. Using their personal devices, these personnel communicated both internally and externally by text messages and/or unapproved written communications platforms ("off-channel communications").

3. From at least June 2019 (the "Relevant Period"), FWM personnel sent and received off-channel communications that were records required to be maintained under Advisers Act Rule 204-2(a)(7). Respondent did not maintain or preserve the substantial majority of these written communications for the five-year period required by Advisers Act Rule 204-2. Respondent's failures were firm-wide and involved personnel at various levels of authority throughout the organization. As a result, FWM violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

4. FWM failed to adopt and implement policies and procedures reasonably designed to prevent the firm and its supervised persons from violating recordkeeping requirements under the Advisers Act.

5. During the time period that FWM failed to maintain and preserve off-channel communications its personnel sent and received, FWM received and responded to Commission requests for documents in an investigation. As a result, FWM's recordkeeping failures likely impacted the Commission's ability to carry out its regulatory functions and investigate violations of the federal securities laws in the investigation.

6. The Commission staff uncovered FWM's violation after an investigation revealed the failures to preserve off-channel communications, and FWM initiated a review of its recordkeeping failures and began a program of remediation. FWM's remediation then continued throughout the remainder of the Relevant Period. FWM's remediation efforts included implementing technology improvements and retaining a compliance consultant.

[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.

Respondent

7. **FWM** is incorporated in New York with its principal place of business in Newburgh, New York. Since November 2010, it has been registered with the Commission as an investment adviser.

Recordkeeping Requirements Under the Advisers Act

8. Section 204 of the Advisers Act authorizes the Commission to issue rules requiring investment advisers to make and keep for prescribed periods, and furnish copies of, such records as necessary or appropriate in the public interest or for the protection of investors.

9. The Commission adopted Advisers Act Rule 204-2 pursuant to this authority. This rule specifies the manner and length of time that the records made in accordance with Commission rules, and certain other records made by investment advisers, must be maintained and produced promptly to Commission representatives.

10. The rules adopted under Section 204 of the Advisers Act, including Advisers Act Rule 204-2(a)(7), require that investment advisers preserve in an easily accessible place originals of all written communications received and copies of all written communications sent relating to, among other things: (a) any recommendation made or proposed to be made and any advice given or proposed to be given; (b) any receipt, disbursement, or delivery of funds or securities; (c) the placing or execution of any order to purchase or sell any security; or (d) predecessor performance and the performance or rate of return of any or all managed accounts, portfolios, or securities recommendations.

FWM's Policies and Procedures

11. FWM maintained certain policies and procedures to retain business-related records, including electronic communications, in compliance with the relevant recordkeeping provisions. Until July 2021, however, FWM policies and procedures also generally allowed employees to use text messaging for internal business communications. FWM permitted employees to use text messaging with clients for communications other than for "investment recommendations, specific products or services, investment performance, or for any other business purposes." Employees were strictly prohibited from using personal email services for "any business purpose."

12. Prior to July 2021, FWM's policies and procedures were not reasonably designed to prevent the firm or its supervised persons from violating the Advisers Act's recordkeeping requirements with respect to text messages that supervised persons sent to their colleagues at the advisory firm. Further, FWM did not implement its policies and procedures that prohibited use of personal email accounts for business correspondence. FWM had no means to monitor for, or to capture and retain, text messages or emails from personal accounts that FWM was required to keep under Rule 204-2(a)(7).

13. In July 2021, FWM modified its compliance policies and procedures to permit only emails and text messaging via FWM's email and text messaging services, except in the event that FWM's email and text messaging system were unavailable, in which case an employee was permitted to use personal email or text messaging for business as long as the employee copied the communication to the FWM system in order to retain such communication. FWM provided certain employees with work phones and allowed employees to use FWM email addresses and a text messaging application on those work phones for business. Messages sent through either service were retained by FWM.

FWM's Recordkeeping Failures

14. During the course of an investigation, Commission staff discovered that FWM had not maintained certain books and records as required under the Advisers Act. During that investigation, in response to document requests by the staff, FWM gathered and produced emails and text messages to and from several FWM personnel, including those at senior levels, and a FWM contractor subject to FWM's policies and procedures, that were sent or received by text message on personal phones or using personal email accounts. These off-channel communications were not maintained on FWM's systems.

15. Based on a review of these off-channel emails and texts, Commission staff identified pervasive off-channel communications among FWM personnel throughout the firm, including at senior levels, as well as off-channel communications between FWM personnel and FWM clients. FWM personnel sent or received off-channel communications that were records required to be preserved by FWM under the Advisers Act. These off-channel communications were sent among FWM colleagues as well as to and from FWM clients and others.

16. Off-channel communications included records required to be preserved under the Advisers Act because they related to an advisory recommendation made or proposed to be made or advice given or proposed to be given. For example, a FWM employee emailed a client a list of his recommended stocks from his personal email account. The email further stated that the employee could be reached on either his FWM email account or his personal email account.

17. Other off-channel communications were records required to be preserved under the Advisers Act because they related to the placing or execution of orders to purchase or sell securities. For example, a FWM employee used his personal email account to send a client a list of individual securities he had purchased for the client along with his recommendation to move money into a separate account.

18. FWM employees routinely communicated internally concerning all aspects of their work via their personal email accounts and by personal text messages. These communications were not maintained or preserved by FWM, and related to, among other things: recommendations made or proposed to be made and advice given or proposed to be given to clients; receipt, disbursement or delivery of funds or securities; placing or execution of orders to purchase or sell securities; and the performance or rate of return of managed accounts, portfolios, or securities recommendations.

FWM's Failure to Preserve Required Records Potentially

Compromised and Delayed Commission Matters

19. During the Relevant Period, FWM received and responded to Commission subpoenas for documents and records requests during a Commission investigation. By failing to maintain and preserve required records relating to its business, FWM likely deprived the Commission of these off-channel communications.

FWM's Violations

20. As a result of the conduct described above, FWM willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

21. As a result of the conduct described above FWM willfully[2] violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

FWM's Efforts to Comply

22. In determining to accept the Offer, the Commission considered steps promptly undertaken and cooperation afforded the Commission staff by Respondent. Before being approached by the staff, FWM began remediating the deficiencies in its compliance policies and procedures in 2021, and continued remediation efforts throughout the Relevant Period. As part of this remediation, FWM hired a compliance consultant and upgraded its methods for archiving and reviewing text messages.

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 203(e) and 203(k) 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 204 and 206(4) of the Advisers Act and Rules 204-2 and 206(4)-7 thereunder.

B. Respondent is censured.

C. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $325,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange

[2] "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.'" 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).

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 Focused Wealth Management 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 Thomas P. Smith, Jr., Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004.

D. Amounts ordered to be paid as a civil money penalty pursuant to this Order shall be treated as a penalty 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