UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100908 / September 4, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6674 / September 4, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22056

In the Matter of **NATIONWIDE PLANNING ASSOCIATES, INC., NPA ASSET MANAGEMENT, LLC, and BLUE POINT STRATEGIC WEALTH MANAGEMENT, LLC,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 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 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") and Section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act"), against Nationwide Planning Associates, Inc. ("Nationwide"), NPA Asset Management, LLC ("NPA"), and Blue Point Strategic Wealth Management, LLC ("Blue Point"), collectively "Respondents".

II.

In anticipation of the institution of these proceedings, Respondents have 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 them and the subject matter of these proceedings, which are admitted, Respondents consent 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 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 Respondents' Offer, the Commission finds that:

Summary

1. This matter relates to Respondents' violations of the whistleblower protections afforded under Exchange Act Rule 21F-17(a).

2. From May 2021 through February 2024 (the "Relevant Period"), Respondents asked eleven brokerage customers and advisory clients (collectively referred to as "clients") to sign confidentiality agreements in connection with compensatory payments authorized by Respondents to be made to the clients' investment accounts. These agreements contained provisions that impeded clients from reporting potential securities law violations to the Commission or any other federal, state, or self-regulatory securities commission or authority, permitting communication only where the Commission or other regulator first initiated an inquiry. Some of the agreements further required the clients to represent that they had not reported the underlying dispute to the Commission or to another securities regulator and would forever refrain from such reporting. These provisions violate Rule 21F-17(a).

Respondents

3. **Nationwide Planning Associates, Inc.** (CRD No. 31029), a New Jersey Corporation headquartered in Fair Lawn, New Jersey, has been registered with the Commission as a broker-dealer since November 18, 1992. Nationwide Planning Associates, Inc. is held under common ownership with NPA Asset Management, LLC, a Commission-registered investment adviser, and Blue Point Strategic Wealth Management, LLC, a state-registered investment adviser.

4. **NPA Asset Management, LLC** (CRD No. 131534), a New Jersey Corporation headquartered in Paramus, New Jersey, has been a Commission-registered investment adviser since February 23, 2006**.** In its Form ADV dated March 28, 2024, NPA reported that it had approximately $882 million in regulatory assets under management.

5. **Blue Point Strategic Wealth Management, LLC** (CRD No. 166617), a New Jersey Corporation headquartered in Fair Lawn, New Jersey, has been an investment adviser registered in the state of New Jersey and in Puerto Rico since January 2018. In its Form ADV dated March 26, 2024, Blue Point reported that it had approximately $14 million in regulatory assets under management.

Facts

Statutory and Regulatory Framework Protecting Whistleblowers

6. The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), enacted on July 21, 2010, amended the Exchange Act by adding Section 21F, "Whistleblower Incentives and Protection." The purpose of these provisions was to encourage whistleblowers to report possible securities law violations by providing, among other things, financial incentives and confidentiality protections. *See Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934 Adopting Release*, Release No. 34-64545, at 197 (Aug. 12, 2011).

7. To fulfill this Congressional purpose, the Commission adopted Rule 21F-17, which provides in relevant part:

> (a) No person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement … with respect to such communications.

Rule 21F-17 became effective on August 12, 2011.

Respondents' "Agreement" and "Agreement and Release" Templates

8. During the Relevant Period, Respondents asked clients to sign a total of eleven confidentiality agreements in connection with compensatory payments authorized to be made to client investment accounts on behalf of one or more of Respondents. These payments were authorized to compensate for investment account losses arising from alleged breaches of federal or state securities laws.

9. The confidentiality agreements were based on either an Agreement or Agreement and Release template. Both templates included provisions that impeded clients from reporting potential securities law violations to the Commission or another federal, state, or self-regulatory securities commission or authority.

10. Paragraph C of the Agreement prohibited clients from disclosing any details of the Agreement or the underlying dispute, or any information about the client's investment accounts or relationship with Respondents, using the following language:

> "The *Recipient* represents that [she / he] shall forever keep completely confidential all of the above terms of this Agreement and shall direct all those in privity with them (including their attorneys, CPAs, etc.) to keep the same completely confidential. The *Recipient* further represent[s] that [she / he] will forever refrain from any discussion, narration, or disclosure of any transaction, circumstance, conversation, or any other aspect of the *Recipient* relationship with any and all of the *Company*, with any person or entity." (emphasis in original)

11. The same paragraph contained a subsequent provision that stated:

> "The confidentiality and non-disclosure provision does not prohibit the *Recipient* from responding to any unsolicited inquiry (i.e., an inquiry not resulting from or attributable to any actions taken by *Recipient* or by any third party at *Recipient's* direction) about the Agreement or its underlying facts and circumstances initiated by any state, federal or self-regulatory commission or authority that regulates the business or activities of registered investment advisers or their representatives."

12. By means of the quoted provisions, Paragraph C of the Agreement expressly limited a client's ability to voluntarily report potential securities law violations to the Commission, notwithstanding the inclusion of a limited carve-out for responding to unsolicited inquiries from government entities and self-regulatory organizations that oversee investment advisers and their employees. Under the limited carve-out, the client signer was not permitted to communicate with the Commission unless the Commission initiated an unsolicited inquiry that *must not* have originated from any action by or at the direction of the client. The terms of the Agreement thus created the reasonable impression that signing clients were prohibited from affirmatively reporting potential securities law violations to the Commission in violation of Rule 21F-17(a), which is intended to "encourag[e] individuals to report to the Commission." *Securities Whistleblower Incentives and Protections Adopting Release*, Release No. 34-63434 (June 13, 2011).

13. The Agreement and Release further impeded reporting to the Commission by including in Paragraph B an express representation that "…*Releasors* have not, directly or indirectly through any third party, reported this matter to any state, federal or self-regulatory securities commission or authority (see Item D. below) regarding the subject matter of this Agreement, and shall forever refrain from doing so…" In requiring clients to attest that they had not made past reports on the matter to a securities regulator and would refrain from any future reporting, Paragraph B expressly contravened Rule 21F-17(a). The inclusion of this provision created the reasonable impression that a client presented with the Agreement and Release would be prohibited from reporting potential securities law violations to a securities regulator if they

wished to accept the compensatory payment offered by Respondents.

14. Paragraph B of the Agreement and Release referenced Item D, which appeared subsequently in the document and stated in relevant part:

> "This confidentiality and non-disclosure provision does not prohibit the *Releasors* from responding to any unsolicited inquiry (i.e., an inquiry not resulting from or attributable to any actions taken by *Releasors* or by any third party at *Releasors'* direction) about this settlement or its underlying facts and circumstances initiated by any state, federal or self-regulatory commission or authority that regulates the business or activities or registered investment advisers or their representatives."

By including clauses prohibiting unauthorized disclosure of confidential information in their Agreement and Release, Respondents took action to impede signing clients from communicating directly with the Commission staff about possible securities law violations. Similarly, by requiring clients to affirmatively certify that they had not previously nor would they ever voluntarily report the matter to the Commission, Respondents raised additional impediments to whistleblowing. Like Paragraph C of the Agreement, Paragraph B of the Agreement and Release expressly limited a client's ability to voluntarily communicate potential securities law violations to the Commission, notwithstanding the limited carve-out in Item D for responding to unsolicited inquiries from government entities. Paragraph B, read together with Item D, created the reasonable impression that signing clients were prohibited from voluntarily initiating communication with the Commission and were permitted to engage in such communication only when initiated by the Commission.

15. By including the clauses described above in agreements with clients, Respondents took action to impede signing clients from communicating directly with the Commission staff about possible securities law violations.

Violations

16. As a result of the conduct described above, Respondents willfully[1] violated Exchange Act Rule 21F-17(a), which prohibits any person from taking any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation.

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[1] "Willfully," for purposes of imposing relief under Section 203(e) of the Advisers Act and 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).

Respondents' Cooperation and Remedial Efforts

17. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff. After Commission staff informed Respondents that their Agreement and Agreement and Release documents included provisions that violated Rule 21F-17, Respondents ceased use of the violative provisions in their Agreement and Agreement and Release templates. Respondents also sent communications to all clients who received the Agreement and Agreement and Release documents at issue stating that the clients are not prohibited from voluntarily or otherwise communicating directly with or providing information to any governmental or regulatory authority about their accounts, the agreements at issue, the underlying facts or circumstances from which the agreements arose, or any other disputes or concerns.

18. The Commission determined that a penalty of $240,000 is appropriate in light of Respondents' cooperation and remedial acts and has taken the Respondents' relative size and financial condition into consideration in apportioning the penalty.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, to impose the sanctions agreed to in Respondents' offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED, that:

A. Respondents cease and desist from committing or causing any violations and any future violations of Exchange Act Rule 21F-17(a).

B. Respondents are censured.

C. Respondent NPA shall pay an individual civil monetary penalty of $160,000 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 by NPA in the following installments:

(1) $4,000 due on September 30, 2024
(2) $4,000 due on October 30, 2024
(3) $4,000 due on November 30, 2024
(4) $4,000 due on December 30, 2024
(5) $4,000 due on January 30, 2025
(6) $4,000 due on February 28, 2025
(7) $27,200 due on March 30, 2025
(8) $27,200 due on April 30, 2025
(9) $27,200 due on May 30, 2025

(10) $27,200 due on June 30, 2025
(11) $27,200 due on July 30, 2025

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, NPA shall contact the staff of the Commission for the amount due. If NPA fails to make any payment by the date agreed 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.

D. Respondent Nationwide shall pay an individual civil monetary 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 by Nationwide in the following installments:

(1) $4,000 due on September 30, 2024
(2) $4,000 due on October 30, 2024
(3) $4,000 due on November 30, 2024
(4) $4,000 due on December 30, 2024
(5) $4,000 due on January 30, 2025
(6) $4,000 due on February 28, 2025
(7) $9,200 due on March 30, 2025
(8) $9,200 due on April 30, 2025
(9) $9,200 due on May 30, 2025
(10) $9,200 due on June 30, 2025
(11) $9,200 due on July 30, 2025

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, Nationwide shall contact the staff of the Commission for the amount due. If Nationwide fails to make any payment by the date agreed 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.

E. Respondent Blue Point shall pay an individual civil monetary penalty of $10,000 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 in full shall be made by Blue Point by September 30, 2024. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

F. Payment must be made in one of the following ways:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondents 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) Respondents 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 MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying the Respondent's name 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 Virginia Rosado Desilets, Assistant Director, Securities and Exchange Commission, Division of Enforcement, 100 F Street, NE, Washington, DC 20549-5010A.

G. 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, Respondents agree that in any Related Investor Action, none of them shall argue that it is entitled to, nor shall any Respondent benefit by, offset or reduction of any award of compensatory damages by the amount of any part of any 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, Respondents agree that they 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 Respondents 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