UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 102425 / February 14, 2025

INVESTMENT ADVISERS ACT OF 1940
Release No. 6855 / February 14, 2025

ADMINISTRATIVE PROCEEDING
File No. 3-22453

In the Matter of **ONE OAK CAPITAL MANAGEMENT, LLC AND MICHAEL DEROSA,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTIONS 203(e), 203(f), 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 One Oak Capital Management, LLC ("One Oak"); and Sections 203(f) and 203(k) of the Advisers Act and Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Michael DeRosa ("DeRosa") (together, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") 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, and except as provided herein in Section V for DeRosa, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e), 203(f), 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 Respondents' Offers, the Commission finds that:

Summary

1. From approximately June 2020 through October 2023 (the "Relevant Period"), One Oak, a registered investment adviser, and one of its investment adviser representatives, Michael DeRosa, failed adequately to disclose advisory fees to certain clients converting their brokerage accounts at an unaffiliated broker-dealer to advisory accounts at One Oak (the "Converted Accounts"). As a result of these conversions, One Oak and DeRosa charged the Converted Accounts advisory fees based on a percentage of assets under management, rather than just brokerage commissions, as they were previously charged by the broker-dealer. Because the Converted Accounts had relatively little trading activity before and after the conversions, the change in fee structure resulted in significantly increased costs for clients, even though these clients generally received no additional services or benefits. One Oak and DeRosa therefore placed their financial interests ahead of the interests of the prospective clients in recommending the conversions. In addition, One Oak and DeRosa did not conduct meaningful reviews of the clients' investment profiles or the characteristics of the two account types. As a result, One Oak and DeRosa did not have a reasonable basis to believe that an advisory account was in their clients' best interests, either at the time of conversion or thereafter. In fact, many of the Converted Accounts were not suitable to be advisory accounts.

2. One Oak also had compliance deficiencies related to the Converted Accounts during the Relevant Period. Additionally, for many of the Converted Accounts, One Oak did not provide a Form ADV at the time of account opening. As a result of this conduct, One Oak violated Advisers Act Sections 204, 206(2), and 206(4) and Rules 204-3 and 206(4)-7 thereunder, and DeRosa violated Section 206(2) of the Advisers Act.

Respondents

3. **One Oak Capital Management**, a New York limited liability company with its principal place of business in Purchase, New York, is an investment adviser. One Oak has been registered with the Commission as an investment adviser since 2019 and was previously registered with the Commission as an investment adviser from 2014 until March 2016. According to its Form ADV filed on April 16, 2024, One Oak had approximately $283 million in assets under management as of April 2024. It has no disciplinary history with the Commission.

4. **Michael DeRosa**, age 75, resides in Manalapan, New Jersey. DeRosa joined One Oak in June 2020 and was registered as an investment adviser representative at One Oak from October 2020 December 2024. DeRosa was previously a registered representative associated with a broker-dealer from 2004 to 2023, including during the Relevant Period. DeRosa holds Series 7, Series 63, and Series 65 licenses. DeRosa has no disciplinary history with the Commission.

Facts

Respondents' Failure to Disclose Advisory Fees

5. Since at least 2020, One Oak has, among other businesses, provided investment advisory services through individual investment adviser representatives, such as DeRosa. At One Oak, DeRosa provided investment advice to retail clients and managed their accounts on a discretionary basis, for which One Oak charged advisory fees.

6. Beginning in or about June 2020, after he became associated with One Oak, DeRosa recommended that his customers at a separate broker-dealer, with which he was simultaneously employed as a registered representative, convert more than 180 brokerage accounts to advisory accounts at One Oak. Most of these customers were elderly and had been long-time customers of DeRosa's at the broker-dealer, which charged the customers on a commission basis.

7. As investment advisers, One Oak and DeRosa had a fiduciary duty under the Advisers Act to disclose to their clients all material facts about the advisory relationship, including the fees they charge for their services and any conflicts of interest between themselves and their clients. To meet their fiduciary duty, One Oak and DeRosa were required to provide their advisory clients with full and fair disclosure that is sufficiently specific such that clients can understand the conflicts of interest and have an informed basis upon which they can consent to or reject the conflicts.

8. One Oak's compliance policies require that the firm obtain "completed" investment management agreements ("IMAs") signed by clients before providing advisory services and charging advisory fees. One Oak's standard IMA stated that clients would pay an advisory fee specified in the schedule attached to the IMA, which the investment adviser representative was to complete before providing to the client for review and signature. One Oak's compliance policies require One Oak's chief compliance officer ("CCO") to periodically review the fee schedules included with the IMAs and review client fees for accuracy.

9. In violation of One Oak's policies, DeRosa provided some clients with IMAs that did not attach a completed fee schedule specifying the advisory fee, and for approximately 60 other accounts, failed to provide an IMA at all before providing advisory services and before One Oak began to charge advisory fees to those accounts.

10. In some instances, an assistant under DeRosa's supervision provided clients with IMAs with blank fee schedules, and then filled in the fee schedule with the advisory fee after the clients signed the IMA. These clients were not provided with the completed IMAs or any other disclosures regarding the specific advisory fee they would be charged.

11. Advisers Act Rule 204-3 and One Oak's compliance policies also require that clients be provided a copy of the Form ADV Part 2A ("brochure") before or at the time of entering into an advisory agreement with One Oak. Notwithstanding this policy and the requirements of Rule 204-

3, One Oak failed to deliver the required brochures to certain clients of the Converted Accounts before or at the time of account opening in 2023.

12. In violation of their fiduciary duties, the Respondents never disclosed in advance that the conversions from brokerage accounts to advisory accounts resulted in significantly higher fees for clients, and increased compensation for DeRosa, nor disclosed the resulting conflict of interest. For example, the accounts converted in 2020 and 2021 incurred a more than seven-fold increase in fees and costs on average, and some clients paid more than ten times in advisory fees to One Oak as they had paid in commissions to the broker-dealer over a similar time period. Through October 2023, One Oak charged those accounts approximately $268,000 in advisory fees. DeRosa received in compensation approximately 75% of the advisory fees that One Oak charged to clients, and therefore benefitted from One Oak charging clients advisory fees that were multiple times higher than the commissions they had been charged at the broker-dealer. The accounts converted in 2023 also incurred significantly higher fees, but One Oak voluntarily refunded those fees in October 2023 after recognizing that it had not provided these clients with IMAs. In the course of the Commission staff's investigation, One Oak subsequently refunded to clients the majority of the advisory fees charged during the Relevant Period.

13. Despite the higher fees charged to the Converted Accounts, DeRosa did not significantly alter the trading activity of the accounts following the conversions to advisory accounts, or generally provide additional services to these accounts. While the accounts were brokerage accounts at the broker-dealer, DeRosa had discretionary authority to trade in the accounts, and he executed relatively few trades—approximately one transaction per two months per account, on average. After the conversions to advisory accounts, DeRosa did not significantly increase the trading activity in the Converted Accounts. In some instances, the number of transactions post-conversion decreased significantly because DeRosa did not obtain the necessary authorizations from clients to execute options trading strategies he had previously employed at the broker-dealer. Many of the Converted Accounts had few, if any, trades for more than a year after their conversion to advisory accounts.

14. DeRosa's monitoring of the accounts also did not change significantly as a result of the conversions to advisory accounts, nor did his investment strategy.

Respondents' Failure to Review Accounts for Suitability

15. An investment adviser's fiduciary duty includes a duty of care. To fulfill this obligation, an adviser, among other things, must provide investment advice in the best interest of its client based on the client's objectives, and must generally provide advice and monitoring over the entire course of the relationship.

16. Further, an investment adviser's fiduciary duty applies to all investment advice the adviser provides to clients, including advice about account type. Advice about account type includes advice about whether to open or invest through a certain type of account, *e.g.*, a commission-based brokerage account or a fee-based advisory account. As a general matter, an

investment adviser's duty to monitor extends to all personalized advice it provides to the client, including, for example, in an ongoing relationship, an evaluation of whether a client's account type continues to be in the client's best interest.

17. One Oak stated in its brochure dated March 2020 that it conducted daily and quarterly reviews of client accounts. One Oak's compliance policies provided that One Oak "reviews the suitability of any advisory services programs offered to the client at the time of account opening" and that it thereafter periodically reviews and updates its suitability determinations. Specifically, the CCO was responsible for ensuring that client accounts are reviewed periodically, with documentation of such reviews to be retained.

18. Notwithstanding its fiduciary duty of care and its policies, One Oak did not adequately consider whether, in light of the clients' investment profiles and the characteristics of the accounts at issue, its recommendation to convert their brokerage accounts to advisory accounts was in its clients' best interests. Further, One Oak's CCO did not have access to sufficient information about the clients of the Converted Accounts with which to evaluate the suitability of their specific investments, other than the clients' age, because DeRosa generally did not obtain information from clients regarding their investment objectives or risk tolerance in writing. For at least the first four months after certain accounts were converted in 2020, no one at One Oak other than DeRosa was able to view the account activity to conduct any review whatsoever. DeRosa also did not fulfill his fiduciary duty of care because he did not conduct meaningful reviews of whether the Converted Accounts were suitable to be advisory accounts.

<u>Violations</u>

19. As a result of the conduct described above, One Oak and DeRosa willfully[1] violated Section 206(2) of the Advisers Act. Section 206(2) of the Advisers Act makes its "unlawful for any investment adviser . . . to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." Scienter is not required to prove violations of Sections 206(2) or 206(4) of the Advisers Act or the rules thereunder; a finding of negligence is sufficient. *SEC v. Steadman*, 967 F.2d 636, 647, 648 n.5 (D.C. Cir. 1992); *see also Steadman v. SEC*, 603 F.2d 1126, 1134 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)).

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[1] "Willfully," for purposes of imposing relief under Sections 203(e) and 203(f) 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).

20. As a result of the conduct described above, One Oak willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. Section 206(4) of the Advisers Act makes it "unlawful for any investment adviser . . . to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative." Rule 206(4)-7 requires registered investment advisers to "[a]dopt and implement written policies and procedures reasonably designed to prevent violation . . . of the [Advisers] Act and the rules that the Commission has adopted under the [Advisers] Act."

21. As a result of the conduct described above, One Oak willfully violated Section 204 of the Advisers Act and Rule 204-3 thereunder. Rule 204-3 requires a registered investment adviser to, among other things, deliver to its client or prospective client a copy of the firm's current brochure before or at the time the firm enters into an investment advisory contract with the client.

Respondents' Remedial Efforts

22. In determining to accept the Offers, the Commission considered remedial acts undertaken by Respondents.

Undertakings

One Oak

One Oak has undertaken the following:

23. Notice to Advisory Clients

a. Within thirty (30) days of entry of the Order, One Oak shall notify former and current clients of the Converted Accounts of the settlement terms of this Order by sending a copy of the Order to each affected client of a Converted Account via mail, email, or other such method not unacceptable to the Commission staff, together with a cover letter in a form not unacceptable to the Commission staff.

b. Within forty (40) days of the entry of this Order, One Oak shall certify, in writing, compliance with the undertaking set forth above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and One Oak agrees to provide such evidence. The certification and supporting material shall be submitted to Liora Sukhatme, Assistant Regional Director, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616, or such other address as the Commission's staff may provide.

24. Independent Compliance Consultant

a. Within sixty (60) days of the entry of this Order, One Oak shall retain the services of an independent compliance consultant (the "Independent Consultant") not unacceptable to the Commission staff. The Independent Consultant's compensation and expenses shall be borne exclusively by One Oak.

b. One Oak shall provide to the Commission staff, within ninety (90) days of the entry of this Order, a copy of the engagement letter detailing the Independent Consultant's responsibilities, which shall include the comprehensive compliance reviews as described below in this Order. Within ninety (90) days of being retained, the Independent Consultant will review and make any recommendations regarding the adoption and implementation of One Oak's policies and procedures relating to One Oak's retail business, and One Oak's training of its investment adviser representatives, in the following areas:

i. Determining and documenting account-type suitability at account opening, including for advisory accounts being converted from brokerage accounts;

ii. Conducting and documenting appropriate monitoring and reviews of advisory accounts for suitability, including for inactivity; and

iii. Disclosure of advisory fees and potential or actual conflicts of interest at the time of account opening, and obtaining required consents.

c. One Oak shall require that, within forty-five (45) days after the completion of its review, the Independent Consultant shall submit a detailed written report of its findings to One Oak and to the Commission Staff (the "Report"). The Report shall describe in detail: (1) a description of the review performed, (2) the Independent Consultant's review, findings, conclusions, and recommendations; (3) any proposals made by One Oak; and (4) a procedure for One Oak to adopt and implement the recommended changes in or improvements to its policies and procedures.

d. One Oak shall adopt all recommendations contained in the Report within sixty (60) days of the Report; provided, however, that within thirty (30) days after the date of the Report, One Oak shall in writing advise the Independent Consultant and the Commission staff of any recommendations that One Oak considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that One Oak considers unduly burdensome, impractical or inappropriate, One Oak need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

e. As to any recommendation on which One Oak and the Independent Consultant do not agree, such parties shall attempt in good faith to reach an agreement within thirty (30) days after One Oak provides the alternative procedures described above. In the event that One Oak and the Independent Consultant are unable to agree on an alternative proposal, One Oak and the Independent Consultant shall jointly confer with the Commission staff to resolve the matter. In the event that, after conferring with the Commission staff, One Oak and the Independent Consultant are unable to agree on an alternative proposal, One Oak will abide by the recommendations of the Independent Consultant.

f. Within thirty (30) days of One Oak's adoption of all of the recommendations in the Report, One Oak shall certify in writing to the Independent Consultant and the Commission staff that it has adopted and implemented all of the Independent Consultant's recommendations in the Report. Unless otherwise directed by the Commission staff, all Reports, certifications and other documents required to be provided to the Commission staff shall be sent to Liora Sukhatme, Assistant Regional Director, Securities and Exchange Commission, New York Regional Office, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616.

g. As part of its work with the Independent Consultant, One Oak shall cooperate fully and provide the Independent Consultant with access to files, books, records, and personnel as are reasonably requested by the Independent Consultant for review.

h. To ensure the independence of the Independent Consultant, One Oak: (1) shall not have the authority to terminate the Independent Consultant or substitute another independent compliance consultant for the initial Independent Consultant, without the prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

i. For the period of engagement and for a period of two years from completion of the engagement, One Oak shall not (i) retain the Independent Consultant for any other professional services outside of the services described in this Order; (ii) enter into any other professional relationship with the Independent Consultant, including any employment, consultant, attorney-client, auditing or other professional relationship; or (iii) enter, without prior written consent of the Commission staff, into any such professional relationship with any of the Independent Consultant's present or former affiliates, employers, directors, officers, employees, or agents acting in their capacity as such.

j. The reports by the Independent Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these

reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) as otherwise required by law.

25. One Oak shall preserve, for a period of not less than six (6) years from the entry of this Order, the first two (2) years in an easily accessible place, any record of compliance with the undertakings set forth in this Order.

26. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings set forth in this Order. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

DeRosa

27. DeRosa has undertaken to provide to the Commission, within thirty (30) days after the end of the nine-month suspension period described below, an affidavit that he has complied fully with the sanctions described in Section IV below.

IV.

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

Accordingly, pursuant to Section 15(b)(6) of the Exchange Act and Sections 203(e), 203(f), and 203(k) of the Advisers Act and, it is hereby ORDERED that:

A. Respondent One Oak cease and desist from committing or causing any violations and any future violations of Sections 204, 206(2), and 206(4) of the Advisers Act and Rules 204-3 and 206(4)-7 promulgated thereunder.

B. Respondent DeRosa cease and desist from committing or causing any violations of Section 206(2) of the Advisers Act.

C. Respondent One Oak is censured.

D. Respondent One Oak shall comply with the undertakings enumerated in Section III, paragraphs 23 through 25 above.

E. Respondent DeRosa shall comply with the undertaking enumerated in Section III, paragraph 27, above.

F. Respondent DeRosa be, and hereby is, suspended from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for a period of nine (9) months, effective immediately upon entry of this Order.

G. One Oak shall pay a civil money penalty in the amount of $150,000 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:

- $37,500 within 10 days of the entry of this Order;
- $37,500 within 120 days of the entry of this Order;
- $37,500 within 240 days of the entry of this Order; and
- $37,500 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, One Oak shall contact the staff of the Commission for the amount due. If One Oak 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.

H. Respondent DeRosa shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of $75,000 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.

I. 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 One Oak or DeRosa 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 Tejal Shah, Associate Regional Director, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

J. 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, Respondents shall not argue that Respondents are entitled to, nor shall Respondents 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, Respondents agree that Respondents shall, within thirty (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.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by DeRosa, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by DeRosa under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by DeRosa of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary