

Press Release

SEC Charges Investment Adviser and Fund Trustees with Liquidity Rule Violations

FOR IMMEDIATE RELEASE

2023-90

Washington D.C., May 5, 2023 — The Securities and Exchange Commission today announced charges against investment adviser Pinnacle Advisors LLC for aiding and abetting Liquidity Rule violations by a mutual fund it advised and whose Liquidity Risk Management Program it administered. The SEC also charged the fund's two independent trustees, Mark Wadach and Lawton "Charlie" Williamson, and two officers of both Pinnacle Advisors and of the fund it advised, Robert Cuculich and Benjamin Quilty, with aiding and abetting Liquidity Rule violations by the fund. A third trustee, Joseph Masella, agreed to settle charges that he caused and willfully counseled the fund's violations.

The action is the first-ever case enforcing the Liquidity Rule, which prohibits mutual funds from investing more than 15 percent of their net assets in illiquid investments, requires funds to take certain prompt remedial steps if they hold illiquid investments above this percentage limit, and requires funds to adopt a liquidity risk management program to assess their liquidity risk.

The SEC's complaint alleges that, from June 2019 to June 2020, the fund held approximately 21 to 26 percent of its net assets in illiquid investments. According to the complaint, Pinnacle Advisors and its officers, Cuculich and Quilty, classified the fund's largest illiquid investment as a "less liquid" investment, ignoring restrictions, transfer limitations, and the absence of any market for the shares, and disregarding the advice of fund counsel and auditors. The SEC alleges that Pinnacle Advisors and its officers did not present the fund's board with a plan to reduce the fund's illiquid investments to 15 percent or lower or make required filings with the SEC, as required by the Liquidity Rule. The complaint also states that Cuculich, Quilty, and Masella misled the SEC's Division of Investment Management about the basis for the fund's liquidity classifications. According to the complaint, the fund's board had oversight responsibilities regarding the fund's Liquidity Risk Management Program, and Wadach and Williamson, who knew that the shares were restricted and illiquid, aided and abetted the fund's violation by recklessly failing to exercise reasonable oversight of the fund's program.

"The Liquidity Rule provides substantive protections to shareholders of open-end funds," said Sheldon L. Pollock, Associate Regional Director in the SEC's New York Regional Office. "Trustees must exercise oversight on behalf of shareholder interests, and the Commission will hold trustees accountable when they fail to fulfill the most basic requirements under the applicable rules."

The SEC's complaint seeks permanent injunctions and civil money penalties. The fund is now a liquidating trust and is not separately charged.

Without admitting or denying the SEC's findings, Masella consented to an order requiring him to cease and desist from violations of the Liquidity Rule and pay a civil penalty of \$20,000, and suspending him from association with any investment adviser, registered investment company, and others for six months.

The SEC also announced charges against Pinnacle Investments LLC, an affiliate of Pinnacle Advisors, for making false and misleading statements in its Form ADV brochure regarding reviews of advisory client accounts and failing

to disclose certain conflicts of interests, adopt and implement related policies and procedures, and deliver to clients required information about advisory personnel. Without admitting or denying the SEC's findings, Pinnacle Investments consented to an order requiring it to cease and desist from violations of the antifraud and other provisions of the Investment Advisers Act of 1940, a censure, and disgorgement and a civil penalty totaling approximately \$476,000.

The SEC's investigation was conducted by Gwen Licardo, Andrew Sporkin, Dani Srour, and Lisa Knoop and was supervised by Hane L. Kim of the Retail Strategy Task Force and Mr. Pollock. Alex Lefferts of the Enforcement Division's Office of Investigative and Market Analytics assisted with the investigation. The examination that led to the investigation was conducted by Anna Schmidt, Shari Singh, Lawrence Chinsky, Rachel Lavery, and Jennifer Klein of the Division of Examinations. The litigation will be handled by Todd Brody, Mr. Sporkin, and Ms. Srour.

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Related Materials

- [SEC Complaint](#)
- [SEC Order - Pinnacle](#)
- [SEC Order - Masella](#)