

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): August 31, 2023

FOCUS FINANCIAL PARTNERS INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-38604
(Commission
File Number)

47-4780811
(IRS Employer
Identification No.)

875 Third Avenue, 28th Floor
New York, NY 10022
(Address of principal executive offices)
(Zip Code)

(646) 519-2456
Registrant's Telephone Number, Including Area Code

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A common stock, par value \$0.01 per share	FOCS	Nasdaq Global Select Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Introductory Note

On August 31, 2023, Focus Financial Partners Inc. (the “Company”), Ferdinand FFP Acquisition, LLC (“Parent”), Ferdinand FFP Merger Sub 1, Inc. (“Company Merger Sub”), Ferdinand FFP Merger Sub 2, LLC (“LLC Merger Sub”), and collectively with Company Merger Sub, the “Merger Subs”) and Focus Financial Partners, LLC a subsidiary of the Company (“Focus LLC”) completed the transactions contemplated by that certain Agreement and Plan of Merger, dated as of February 27, 2023 (the “Merger Agreement”), by and among the Company, Parent, Company Merger Sub, LLC Merger Sub and Focus LLC. Parent and the Merger Subs are affiliated with Clayton, Dubilier & Rice, LLC (“CD&R”) and Stone Point Capital LLC (“Stone Point”). Pursuant to the Merger Agreement, among other things, (a) LLC Merger Sub merged with and into Focus LLC (the “LLC Merger”), with Focus LLC surviving the LLC Merger as a subsidiary of Parent and (b) Company Merger Sub merged with and into the Company (the “Company Merger” and, collectively with the LLC Merger, the “Mergers”), with the Company surviving the Merger as a subsidiary of Parent (such surviving entity, the “Surviving Corporation”). As a result of the Mergers, an investment vehicle controlled by Stone Point and CD&R became the indirect owner of 100% of the Company’s common stock. Capitalized terms used and not otherwise defined herein have the meaning set forth in the Merger Agreement.

Item 1.01. Entry into a Material Definitive Agreement.

The Mergers were funded in part with proceeds from a senior secured incremental B-6 term loan facility in an aggregate principal amount of \$500.0 million (the “Incremental Term Loan Credit Facility”)

On August 31, 2023, Focus LLC entered into Amendment No. 13 to its First Lien Credit Agreement dated as of July 3, 2017, by and among Focus LLC, as borrower, the lenders party thereto, Royal Bank of Canada, as term administrative agent, collateral agent and fronting bank, and Bank of America, N.A., as revolver administrative agent and letter of credit issuer, to, among other things, (i) add incremental commitments to Focus LLC’s existing credit facilities, comprised of the Incremental Term Loan Credit Facility and (ii) make certain amendments to the terms of Focus LLC’s existing term loan A and revolving credit facilities.

The proceeds of the Incremental Term Loan Credit Facility were used to partially fund the consummation of the Mergers and the related transactions.

The Incremental Term Loan Credit Facility will mature on June 30, 2028, which is the same as the maturity date for Focus LLC’s existing tranche B-5 term loans. The Incremental Term Loan Credit Facility will amortize quarterly, starting with the fiscal quarter ending December 31, 2023, in installments equal to 0.25% of the principal amount of the Incremental Term Loan Credit Facility, with the balance of the Incremental Term Loan Credit Facility being due and payable at maturity. The amounts outstanding under the Incremental Term Loan Credit Facility will bear interest at a rate per annum equal to, at Focus LLC’s option, the base rate or the adjusted term SOFR rate, plus, in each case, an applicable margin. The applicable margin is initially 2.50% per annum for base rate loans and 3.50% per annum for adjusted term SOFR rate loans. From and after the delivery by Focus LLC of its financial statements for the fiscal quarter ending December 31, 2023, the applicable margin will be subject to a decrease of 0.25% (for the margin for each of adjusted term SOFR and base rate loans) based upon achievement of a first lien leverage ratio of 4.25:1.00. In addition, the applicable margin under the Incremental Term Loan Credit Facility is subject to an additional decrease of 0.25% (for the margin for each of adjusted term SOFR and base rate loans) following a qualified initial public offering.

Other than in respect of the mandatory amortization payments as set forth above, there are no current plans to repay the Incremental Term Loan Credit Facility prior to its stated maturity.

Item 2.01. Completion of Acquisition or Disposition of Assets.

The information set forth in the Introductory Note and in Items 3.03, 5.01, 5.02, and 5.03 of this Current Report on Form 8-K are incorporated by reference in this Item 2.01.

At the effective time of the Company Merger (the “Company Merger Effective Time”), (a) each share of Class A common stock, par value \$0.01 per share, of the Company (“Class A Common Stock”) issued and outstanding immediately prior to the Company Merger Effective Time, other than Excluded Shares, was converted into the right to receive \$53 in cash, without interest, (the “Merger Consideration”) and (b) each share of Class B common stock, par value \$0.01 per share, of the Company (“Class B Common Stock”) and collectively with Class A Common Stock, “Company Stock”) issued and outstanding immediately prior to the Company Merger Effective Time was cancelled and ceased to exist and no payment was made with respect thereto.

Immediately prior to the effective time of the LLC Merger (the “LLC Merger Effective Time”), and conditioned upon the closing of LLC Merger, each member of Focus LLC that held common units of Focus LLC (each a “Common Unit”) that were vested (including, with respect to each member of Focus LLC who held incentive units of Focus LLC (each an “Incentive Unit” and collectively with the Common Units, the “Focus LLC Units”) that were vested and had a Hurdle Amount (as defined in the Focus LLC Agreement) less than the Merger Consideration, the applicable number of vested Common Units received as a result of the conversion of such vested Incentive Units held by such member) (a) exchanged its Focus LLC Units for shares of Class A Common Stock, and (b) surrendered for cancellation the corresponding number of shares of Class B Common Stock in accordance with the Focus LLC Agreement (such exchange and surrender, the “Vested Units Exchanges”).

At the Company Merger Effective Time, each then outstanding unvested Common Unit held by a member of Focus LLC (other than the Company and its wholly owned subsidiaries or Parent) (including, with respect to each such member who held unvested Incentive Units having a Hurdle Amount less than the Merger Consideration, the applicable number of unvested Common Units received as a result of the conversion of unvested Incentive Units held by such member), was cancelled and converted into a contingent cash payment, without interest, equal in an amount that would be payable pursuant to the Merger Agreement if such unvested Common Unit were a Company Restricted Share, which contingent cash payment, without interest, will remain subject and become payable pursuant to the same vesting schedule applicable to the corresponding unvested Common Unit or Incentive Unit, as applicable.

At the LLC Merger Effective Time, each Focus LLC Unit issued and outstanding immediately prior to the LLC Merger Effective Time and after giving effect to the Vested Units Exchanges, other than (a) Focus LLC Units owned by Parent and (b) the Focus LLC Units owned by the Company or any of its wholly owned subsidiaries, was cancelled and ceased to exist and no payment was made with respect thereto.

At the Company Merger Effective Time, each outstanding option to purchase shares of Company Stock (each a “Company Option”) that was vested, having a per share exercise price less than the Merger Consideration immediately prior to the Company Merger Effective Time was cancelled and converted into the right to receive an amount in cash equal to the product of (a) the number of shares of Company Stock subject to such stock option immediately before the Company Merger Effective Time and (b) the excess, if any, of (1) the Merger Consideration over (2) the exercise price per share of Company Stock of such Company Option (the “Option Consideration”). Each outstanding and unvested Company Option, having a per share exercise price less than the Merger Consideration immediately prior to the Company Merger Effective Time was cancelled and converted into a contingent right to receive a cash payment from the Surviving Corporation equal to Option Consideration with respect to such Company Option, and such resulting cash-based awards remain subject and become payable pursuant to the same the vesting schedule applicable to such Company Option from which it was converted immediately prior to the Company Merger Effective Time, subject to the holder’s continued employment with or service to Parent and its affiliates (including the Surviving Corporation and its subsidiaries) through the applicable vesting date. Each outstanding Company Option with a per share exercise price equal to or greater than the Merger Consideration, whether or not vested, was cancelled for no consideration.

At the Company Merger Effective Time, each outstanding restricted stock unit award corresponding to shares of Company Stock (each a “Company RSU”) that was unvested as of immediately prior to the Company Merger Effective Time was cancelled and converted into a contingent cash payment, without interest, from the Surviving Corporation in an amount equal to the product of (a) the number of shares of Company Stock subject to such Company RSU immediately prior to the Company Merger Effective Time and (b) the Merger Consideration, and such resulting cash-based awards remain subject and become payable pursuant to the same vesting schedule applicable to such Company RSU from which it was converted immediately prior to the Company Merger Effective Time, subject to the holder’s continued employment with or service to Parent and its affiliates (including the Surviving Corporation and its subsidiaries) through the applicable vesting dates.

At the Company Merger Effective Time, each outstanding share of Company Stock subject to forfeiture, vesting or other lapse conditions (each a “Company Restricted Share”) as of immediately prior to the Company Merger Effective Time was cancelled and converted into a contingent contractual right to receive a cash payment, without interest, from the Surviving Corporation in an amount equal to the Merger Consideration and such resulting cash-based awards will remain subject and become payable pursuant to the same vesting schedule applicable to such Company Restricted Share from which it was converted immediately prior to the Company Merger Effective Time, subject to the holder’s continued employment with or service to Parent and its affiliates (including the Surviving Corporation and its subsidiaries) through the applicable vesting dates.

A copy of the Merger Agreement is attached hereto as Exhibit 2.1 and is incorporated herein by reference. The foregoing description of the Merger Agreement is only a summary, does not purport to be complete and is qualified in its entirety by reference to the full text of the Merger Agreement.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated by reference in this Item 2.03.

Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

The information set forth in the Introductory Note and in Item 2.01 of this Current Report on Form 8-K is incorporated by reference in this Item 3.01.

On August 31, 2023, the Company notified the Nasdaq Global Select Market (“NASDAQ”) that the Mergers had been completed, and requested that NASDAQ suspend trading of Class A Common Stock on NASDAQ prior to the opening of trading on August 31, 2023. The Company also requested that NASDAQ file with the U.S. Securities and Exchange Commission (the “SEC”) a notification of removal from listing and registration on Form 25 to effect the delisting of all shares of Class A Common Stock from NASDAQ and the deregistration of such shares under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). As a result, shares of Class A Common Stock will no longer be listed on NASDAQ.

In addition, the Company intends to file a certification on Form 15 with the SEC requesting the termination of registration of all shares of Class A Common Stock under Section 12(g) of the Exchange Act and the suspension of the Company’s reporting obligations under Section 13 of the Exchange Act with respect to all shares of Class A Common Stock.

Item 3.03. Material Modification to Rights of Security Holders.

The information set forth in the Introductory Note and in Items 2.01, 3.01, 5.01 and 5.03 of this Current Report on Form 8-K is incorporated by reference in this Item 3.03.

Item 5.01. Changes in Control of the Registrant.

The information set forth in the Introductory Note and in Items 2.01, 2.03, 3.03 and 5.02 of this Current Report on Form 8-K is incorporated by reference in this Item 5.01.

As a result of the completion of the Mergers, a change in control of the Company occurred, and the Company became a wholly owned subsidiary of Parent. The aggregate Merger Consideration paid to Company stockholders was approximately \$4,500 million. The funds used by Parent to consummate the Mergers and complete the related transactions came from equity contributions from the investment funds affiliated with CD&R and Stone Point, and proceeds received in connection with debt financing pursuant to the Incremental Term Loan Credit Facility.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

The information set forth in the Introductory Note and in Item 2.01 of this Current Report on Form 8-K is incorporated by reference in this Item 5.02.

Directors

Pursuant to the terms of the Merger Agreement, immediately prior to, but conditioned on the occurrence of, the Company Merger Effective Time, Ruediger Adolf, Rajini Sundar Kodialam, James D. Carey, Joseph Feliciani, Jr., George S. LeMieux, Greg S. Morganroth, MD, Faye S. Muhtadie and Elizabeth R. Neuhoff each resigned from their positions as members of the board of directors of the Company and from any and all committees of the board of directors on which they served. In addition, pursuant to the terms of the Merger Agreement, from and after the Company Merger Effective Time, David Winokur, Faye S. Muhtadie and Lauren Seidman, who were directors of Company Merger Sub immediately before the Company Merger Effective Time, became directors of the Company. Immediately following the Company Merger Effective Time, Ruediger Adolf and James Shanahan were appointed to the board of directors of the Surviving Corporation and David Winokur, Faye S. Muhtadie and Lauren Seidman resigned from the board of directors of the Surviving Corporation.

Officers

The officers of the Company immediately prior to the Company Merger Effective Time continued as officers of the Company.

Item 5.03. Amendments to Articles of Incorporation of Bylaws; Change in Fiscal Year.

The information contained in the Introductory Note and in Item 2.01 of this Current Report on Form 8-K is incorporated by reference in this Item 5.03.

Pursuant to the terms of the Merger Agreement, at the Company Merger Effective Time, the Company's Amended and Restated Certificate of Incorporation, as in effect immediately prior to the Company Merger Effective Time, was amended and restated in its entirety (the "Charter"). A copy of the Charter is attached hereto as Exhibit 3.1 and is incorporated herein by reference. Pursuant to the terms of the Merger Agreement, at the Company Merger Effective Time, the Company's Amended and Restated Bylaws, as in effect immediately prior to the Company Merger Effective Time, were amended and restated in their entirety (the "Bylaws"). A copy of the Bylaws is attached hereto as Exhibit 3.2 and is incorporated herein by reference.

Item 8.01. Other Events.

On August 31, 2023, the Company issued a press release announcing the closing of the Mergers. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description of Exhibit
<u>2.1</u>	<u>Agreement and Plan of Merger, dated as of February 27, 2023, by and among Ferdinand FFP Acquisition, LLC, Ferdinand FFP Merger Sub 1, Inc., Ferdinand FFP Merger Sub 2, Focus Financial Partners Inc., and Focus Financial Partners, LLC (filed as Exhibit 2.1 to the Company's Current Report on Form 8-K, filed on February 28, 2023 and incorporated herein by reference).</u>
<u>3.1</u>	<u>Amended and Restated Certificate of Incorporation of Focus Financial Partners Inc.</u>
<u>3.2</u>	<u>Amended and Restated Bylaws of Focus Financial Partners Inc.</u>
<u>99.1</u>	<u>Press Release, dated as of August 31, 2023.</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

FOCUS FINANCIAL PARTNERS INC.

By: /s/ J. Russell McGranahan
J. Russell McGranahan
General Counsel

Dated: August 31, 2023

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION**

OF

FOCUS FINANCIAL PARTNERS INC.

ARTICLE ONE

The name of the Corporation is Focus Financial Partners Inc. (the “Corporation”).

ARTICLE TWO

The address of the Corporation’s registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE THREE

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the “DGCL”).

ARTICLE FOUR

The total number of shares of capital stock that the Corporation has authority to issue is 1,100 shares of Common Stock, par value \$0.01 per share (the “Common Stock”). The Common Stock shall consist of two series, Series A Common Stock, par value \$0.01 per share (the “Series A Common Stock”) and Non-Voting Series B Common Stock, par value \$0.01 per share (the “Non-Voting Series B Common Stock”). The Corporation has authority to issue 1,000 shares of Series A Common Stock and 100 shares of Non-Voting Series B Common Stock. The Corporation may issue fractional shares of Series A Common Stock or Non-Voting Series B Common Stock.

Dividends shall accrue on the Non-Voting Series B Common Stock on a daily basis at the rate of 12% per annum multiplied by the “Stated Value”. All accrued dividends on any outstanding share of Non-Voting Series B Common Stock shall be paid in cash on each anniversary of the issuance of any shares of Non-Voting Series B Common Stock, only when, as and if declared by the board of directors of the Corporation and to the extent not prohibited by Section 170 of the DGCL and only out of funds legally available therefor. To the extent any dividend is not paid on a relevant payment date, or is elected by the Corporation not to be paid on a relevant payment date, such dividends during such one year period shall accumulate and be added to the “Stated Value” of a share of Non-Voting Series B Common Stock. When used herein, the “Stated Value” means, for each share of Non-Voting Series B Common Stock, \$100,000. Whether or not all accumulated dividends or other accrued and unpaid dividends on Non-Voting Series B Common Stock have been paid in full, the board of directors of the Corporation may declare dividends on the Series A Common Stock at such times and in such amounts as the board of directors of the Corporation may determine and each share of Series A Common Stock shall be entitled to share ratably in such dividends.

In any liquidation, dissolution or winding up of the Corporation, prior to any payment or distribution in respect of the Series A Common Stock, each share of Non-Voting Series B Common Stock shall be entitled to receive the Stated Value on such share plus all accrued and unpaid dividends and thereafter shall not be entitled to participate in any payment or distribution out of any assets of the Corporation. After payment in full of the amounts due in respect of each share of Non-Voting Series B Common Stock, in any liquidation, dissolution or winding up of the Corporation, the remaining assets of the Corporation shall be distributed to the holders of Series A Common Stock ratably on a per share basis. No merger or consolidation to which the Corporation is a party shall be treated as a liquidation, dissolution or winding up of the Corporation.

Except as required by the DGCL, in any matter submitted to stockholders of the Corporation for vote (including the election of directors), (a) each share of Series A Common Stock shall be entitled to one vote and (b) no share of Non-Voting Series B Common Stock shall be entitled to any vote on any matter.

No share of Non-Voting Series B Common Stock is convertible into Series A Common Stock and no share of Series A Common Stock is convertible into Non-Voting Series B Common Stock.

ARTICLE FIVE

The Corporation is to have perpetual existence.

ARTICLE SIX

In furtherance and not in limitation of the powers conferred by statute, the board of directors of the Corporation shall have the power to adopt, amend, make, alter or repeal the bylaws of the Corporation.

ARTICLE SEVEN

Meetings of stockholders may be held within or outside of the State of Delaware, as the bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the board of directors or in the bylaws of the Corporation. Election of directors of the Corporation need not be by written ballot unless the bylaws of the Corporation so provide.

ARTICLE EIGHT

No director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as it now exists. In addition to the circumstances in which a director of the Corporation is not personally liable as set forth in the preceding sentence, a director of the Corporation shall not be liable to the fullest extent permitted by any amendment to the DGCL hereafter enacted that further limits the liability of a director.

The Corporation shall have the power to indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director, officer, employee, agent or trustee of the Corporation, any predecessor of the Corporation or any subsidiary or affiliate of the Corporation, or serves or served at any other enterprise as a director, officer, employee, agent or trustee at the request of the Corporation or any predecessor to the Corporation.

Any amendment, repeal or modification of this Article Eight shall be prospective only and shall not affect any limitation on liability of a director for acts or omissions occurring prior to the date of such amendment, repeal or modification.

ARTICLE NINE

The Corporation expressly elects not to be governed by §203 of the General Corporation Law of the State of Delaware.

ARTICLE TEN

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation in the manner now or hereafter prescribed herein and by the laws of the State of Delaware, and all rights conferred upon stockholders herein are granted subject to this reservation.

ARTICLE ELEVEN

To the maximum extent permitted from time to time under the law of the State of Delaware, the Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, business opportunities that are from time to time presented to its officers, directors or stockholders, other than those officers, directors or stockholders who are employees of the Corporation. No amendment or repeal of this ARTICLE ELEVEN shall apply to or have any effect on the liability or alleged liability of any officer, director or stockholder of the Corporation for or with respect to any opportunities of which such officer, director, or stockholder becomes aware prior to such amendment or repeal.

* * * * *

FOCUS FINANCIAL PARTNERS INC.

AMENDED AND RESTATED
BYLAWS

As Adopted on August 31, 2023

FOCUS FINANCIAL PARTNERS INC.

BYLAWS

Table of Contents

	<u>Page</u>
ARTICLE I MEETINGS OF STOCKHOLDERS	1
Section 1.01. <u>Annual Meetings</u>	1
Section 1.02. <u>Special Meetings</u>	1
Section 1.03. <u>Participation in Meetings by Remote Communication</u>	1
Section 1.04. <u>Notice of Meetings; Waiver of Notice</u>	1
Section 1.05. <u>Proxies</u>	2
Section 1.06. <u>Voting Lists</u>	2
Section 1.07. <u>Quorum</u>	3
Section 1.08. <u>Voting</u>	3
Section 1.09. <u>Adjournment</u>	3
Section 1.10. <u>Organization; Procedure</u>	3
Section 1.11. <u>Consent of Stockholders in Lieu of Meeting</u>	4
ARTICLE II BOARD OF DIRECTORS	4
Section 2.01. <u>General Powers</u>	4
Section 2.02. <u>Number and Term of Office</u>	4
Section 2.03. <u>Election of Directors</u>	5
Section 2.04. <u>Regular Meetings</u>	5
Section 2.05. <u>Special Meetings</u>	5
Section 2.06. <u>Notice of Meetings; Waiver of Notice</u>	5
Section 2.07. <u>Quorum; Voting</u>	5
Section 2.08. <u>Action by Telephonic Communications</u>	5
Section 2.09. <u>Adjournment</u>	6
Section 2.10. <u>Action Without a Meeting</u>	6
Section 2.11. <u>Regulations</u>	6
Section 2.12. <u>Resignations of Directors</u>	6
Section 2.13. <u>Removal of Directors</u>	6
Section 2.14. <u>Vacancies and Newly Created Directorships</u>	6
Section 2.15. <u>Compensation</u>	6
Section 2.16. <u>Reliance on Accounts and Reports, etc.</u>	7
ARTICLE III COMMITTEES	7
Section 3.01. <u>Designation of Committees</u>	7
Section 3.02. <u>Members and Alternate Members</u>	7
Section 3.03. <u>Committee Procedures</u>	7
Section 3.04. <u>Meetings and Actions of Committees</u>	8
Section 3.05. <u>Resignations and Removals</u>	8
Section 3.06. <u>Vacancies</u>	8

Table of Contents
(continued)

	<u>Page</u>
ARTICLE IV OFFICERS	8
Section 4.01. <u>Officers</u>	8
Section 4.02. <u>Election</u>	8
Section 4.03. <u>Compensation</u>	8
Section 4.04. <u>Removal and Resignation; Vacancies</u>	9
Section 4.05. <u>Authority and Duties of Officers</u>	9
Section 4.06. <u>President</u>	9
Section 4.07. <u>Vice Presidents</u>	9
Section 4.08. <u>Secretary</u>	10
Section 4.09. <u>Treasurer</u>	10
ARTICLE V CAPITAL STOCK	11
Section 5.01. <u>Certificates of Stock; Uncertificated Shares</u>	11
Section 5.02. <u>Facsimile Signatures</u>	11
Section 5.03. <u>Lost, Stolen or Destroyed Certificates</u>	12
Section 5.04. <u>Transfer of Stock</u>	12
Section 5.05. <u>Registered Stockholders</u>	12
ARTICLE VI INDEMNIFICATION	13
Section 6.01. <u>Indemnification</u>	13
Section 6.02. <u>Indemnity if Successful</u>	14
Section 6.03. <u>Procedure for Indemnification</u>	14
Section 6.04. <u>Burden of Proof</u>	14
Section 6.05. <u>Contract Right; Non-Exclusivity; Survival</u>	15
Section 6.06. <u>Insurance</u>	15
Section 6.07. <u>Employees and Agents</u>	15
Section 6.08. <u>Interpretation; Severability</u>	16
Section 6.09. <u>Coordination of Claims</u>	16
ARTICLE VII OFFICES	16
Section 7.01. <u>Registered Office</u>	16
Section 7.02. <u>Other Offices</u>	16
ARTICLE VIII GENERAL PROVISIONS	17
Section 8.01. <u>Dividends</u>	17
Section 8.02. <u>Reserves</u>	17
Section 8.03. <u>Execution of Instruments</u>	17
Section 8.04. <u>Voting as Stockholder</u>	17
Section 8.05. <u>Fiscal Year</u>	17
Section 8.06. <u>Seal</u>	18
Section 8.07. <u>Books and Records; Inspection</u>	18
Section 8.08. <u>Electronic Transmission</u>	18

Table of Contents
(continued)

	<u>Page</u>
ARTICLE IX AMENDMENT OF BYLAWS	18
Section 9.01. <u>Amendment</u>	18
ARTICLE X CONSTRUCTION	18
Section 10.01. <u>Construction</u>	18

FOCUS FINANCIAL PARTNERS INC.

AMENDED AND RESTATED
BYLAWS

As Adopted on August 31, 2023

ARTICLE I

MEETINGS OF STOCKHOLDERS

Section 1.01. Annual Meetings. An annual meeting of the stockholders of the corporation for the election of directors and for the transaction of such other business as properly may come before such meeting shall be held each year either within or without the State of Delaware on such date and at such place and time as are designated by resolution of the corporation's board of directors (the "Board"), unless the stockholders have acted by written consent to elect directors as permitted by the General Corporation Law of the State of Delaware, as amended from time to time (the "DGCL").

Section 1.02. Special Meetings. A special meeting of the stockholders for any purpose may be called at any time by the President (or, in the event of his or her absence or disability, by any Vice President) or by the Secretary pursuant to a resolution of the Board, to be held either within or without the State of Delaware on such date and at such time and place as are designated by such officer or in such resolution.

Section 1.03. Participation in Meetings by Remote Communication. The Board, acting in its sole discretion, may establish guidelines and procedures in accordance with applicable provisions of the DGCL and any other applicable law for the participation by stockholders and proxyholders in a meeting of stockholders by means of remote communications, and may determine that any meeting of stockholders will not be held at any place but will be held solely by means of remote communication. Stockholders and proxyholders complying with such procedures and guidelines and otherwise entitled to vote at a meeting of stockholders shall be deemed present in person and entitled to vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication.

Section 1.04. Notice of Meetings; Waiver of Notice.

(a) The Secretary or any Assistant Secretary shall cause notice of each meeting of stockholders to be given in writing in a manner permitted by the DGCL not less than 10 days nor more than 60 days prior to the meeting to each stockholder of record entitled to vote at such meeting, subject to such exclusions as are then permitted by the DGCL. The notice shall specify (i) the place, if any, date and time of such meeting, (ii) the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, (iii) in the case of a special meeting, the purpose or purposes for which such meeting is called, and (iv) such other information as may be required by law or as may be deemed appropriate by the President, the Vice President calling the meeting, or the Board. If the stockholder list referred to in Section 1.06 of these bylaws is made accessible on an electronic network, the notice of meeting must indicate how the stockholder list can be accessed. If the meeting of stockholders is to be held solely by means of electronic communications, the notice of meeting must provide the information required to access such stockholder list during the meeting.

(b) A written waiver of notice of meeting signed by a stockholder or a waiver by electronic transmission by a stockholder, whether given before or after the meeting time stated in such notice, is deemed equivalent to notice. Attendance of a stockholder at a meeting is a waiver of notice of such meeting, except when the stockholder attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business at the meeting on the ground that the meeting is not lawfully called or convened.

Section 1.05. Proxies.

(a) Each stockholder entitled to vote at a meeting of stockholders or to express consent to or dissent from corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy.

(b) A stockholder may authorize a valid proxy by executing a written instrument signed by such stockholder, or by causing his or her signature to be affixed to such writing by any reasonable means, including but not limited to by facsimile signature, or by transmitting or authorizing an electronic transmission (as defined in Section 8.08 of these bylaws) setting forth an authorization to act as proxy to the person designated as the holder of the proxy, a proxy solicitation firm or a like authorized agent. Proxies by electronic transmission must either set forth, or be submitted with, information from which it can be determined that the electronic transmission was authorized by the stockholder. Any copy, facsimile telecommunication or other reliable reproduction of a writing or transmission created pursuant to this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used if such copy, facsimile telecommunication or other reproduction is a complete reproduction of the entire original writing or transmission.

(c) No proxy may be voted or acted upon after the expiration of three years from the date of such proxy, unless such proxy provides for a longer period. Every proxy is revocable at the pleasure of the stockholder executing it unless the proxy states that it is irrevocable and applicable law makes it irrevocable. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or by filing another duly executed proxy bearing a later date with the Secretary.

Section 1.06. Voting Lists. The officer of the corporation who has charge of the stock ledger of the corporation shall prepare, at least 10 days before every meeting of the stockholders (and before any adjournment thereof for which a new record date has been set), a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder. This list shall be open to the examination of any stockholder prior to and during the meeting for any purpose germane to the meeting as required by the DGCL or other applicable law. The stock ledger shall be the only evidence as to who are the stockholders entitled by this section to examine the list required by this section or to vote in person or by proxy at any meeting of stockholders.

Section 1.07. Quorum. Except as otherwise required by law or by the certificate of incorporation, the presence in person or by proxy of the holders of record of a majority of the shares entitled to vote at a meeting of stockholders shall constitute a quorum for the transaction of business at such meeting.

Section 1.08. Voting. Every holder of record of shares entitled to vote at a meeting of stockholders is entitled to one vote for each share outstanding in his or her name on the books of the corporation (a) at the close of business on the record date for such meeting, or (b) if no record date has been fixed, at the close of business on the day next preceding the day on which notice of the meeting is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. All matters at any meeting at which a quorum is present, including the election of directors, shall be decided by the affirmative vote of a majority of the shares of stock present in person or represented by proxy at the meeting and entitled to vote on the subject matter in question, unless otherwise expressly provided by express provision of law or the certificate of incorporation. The stockholders do not have the right to cumulate their votes for the election of directors.

Section 1.09. Adjournment. Any meeting of stockholders may be adjourned from time to time, by the chairperson of the meeting or by the vote of a majority of the shares of stock present in person or represented by proxy at the meeting, to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the place, if any, and date and time thereof (and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting) are announced at the meeting at which the adjournment is taken unless the adjournment is for more than 30 days or a new record date is fixed for the adjourned meeting after the adjournment, in which case notice of the adjourned meeting in accordance with Section 1.04 of these bylaws shall be given to each stockholder of record entitled to vote at the meeting. At the adjourned meeting, the corporation may transact any business that might have been transacted at the original meeting.

Section 1.10. Organization; Procedure. The President shall preside over each meeting of stockholders. If the President is absent or disabled, the presiding officer shall be selected by the Board or, failing action by the Board, by a majority of the stockholders present in person or represented by proxy. The Secretary, or in the event of his or her absence or disability, an appointee of the presiding officer, shall act as secretary of the meeting. The Board may make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to any such rules and regulations, the presiding officer of any meeting shall have the right and authority to prescribe rules, regulations and procedures for such meeting and to take all such actions as in the judgment of the presiding officer are appropriate for the proper conduct of such meeting.

Section 1.11. Consent of Stockholders in Lieu of Meeting.

(a) Unless otherwise provided in the certificate of incorporation, any action required or permitted to be taken at an annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote of stockholders, if a consent or consents in writing, setting forth the action so taken, are (i) signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted (but not less than the minimum number of votes otherwise prescribed by law) and (ii) delivered to the corporation by delivery to its registered office in this State, to its principal place of business or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded within 60 days of the earliest dated consent so delivered to the corporation.

(b) If a stockholder consent is to be given without a meeting of stockholders, and the Board has not fixed a record date for the purpose of determining the stockholders entitled to participate in such consent, then: (i) if the DGCL does not require action by the Board prior to the proposed stockholder action, the record date shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation at any of the locations referred to in Section 1.11(a)(ii); and (ii) if the DGCL requires action by the Board prior to the proposed stockholder action, the record date shall be at the close of business on the day on which the Board adopts the resolution taking such prior action. Every written consent to action without a meeting shall bear the date of signature of each stockholder who signs the consent, and shall be valid if timely delivered to the corporation at any of the locations referred to in Section 1.11(a)(ii).

(c) The Secretary shall give prompt notice of the taking of an action without a meeting by less than unanimous written consent to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take the action were delivered to the corporation in accordance with the DGCL.

ARTICLE II

BOARD OF DIRECTORS

Section 2.01. General Powers. Except as may otherwise be provided by law or by the certificate of incorporation, the affairs and business of the corporation shall be managed by or under the direction of the Board. The directors shall act only as a Board, and the individual directors shall have no power as such.

Section 2.02. Number and Term of Office. The number of directors constituting the entire Board shall initially be three (each of whom shall be a natural person), which number may be modified from time to time by resolution of the Board, but in no event shall the number of directors be less than one. Each director (whenever elected) shall hold office until his or her successor has been duly elected and qualified, or until his or her earlier death, resignation or removal.

Section 2.03. Election of Directors. Except as otherwise provided in Sections 2.13 and 2.14 of these bylaws, the directors shall be elected at each annual meeting of the stockholders. If the annual meeting for the election of directors is not held on the date designated therefor, the directors shall cause the meeting to be held as soon thereafter as convenient. At each meeting of the stockholders for the election of directors, provided a quorum is present, the directors shall be elected by a plurality of the votes validly cast in such election.

Section 2.04. Regular Meetings. Regular meetings of the Board shall be held on such dates, and at such times and places as are determined from time to time by resolution of the Board.

Section 2.05. Special Meetings. Special meetings of the Board shall be held whenever called by the President or, in the event of his or her absence or disability, by any Vice President, or by a majority of the directors then in office, at such place, date and time as may be specified in the respective notices or waivers of notice of such meetings. Any business may be conducted at a special meeting.

Section 2.06. Notice of Meetings; Waiver of Notice.

(a) Notices of special meetings shall be given to each director, and notice of each resolution or other action affecting the date, time or place of one or more regular meetings shall be given to each director not present at the meeting adopting such resolution or other action, subject to Section 2.09 of these bylaws. Notices shall be given personally, or by telephone confirmed by facsimile or email dispatched promptly thereafter, or by facsimile or email confirmed by a writing delivered by a recognized overnight courier service, directed to each director at the address from time to time designated by such director to the Secretary. Each such notice and confirmation must be given (received in the case of personal service or delivery of written confirmation) at least 24 hours prior to the time of a special meeting, and at least five days prior to the initial regular meeting affected by such resolution or other action, as the case may be.

(b) A written waiver of notice of meeting signed by a director or a waiver by electronic transmission by a director, whether given before or after the meeting time stated in such notice, is deemed equivalent to notice. Attendance of a director at a meeting is a waiver of notice of such meeting, except when the director attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business at the meeting on the ground that the meeting is not lawfully called or convened.

Section 2.07. Quorum; Voting. At all meetings of the Board, the presence of a majority of the total authorized number of directors shall constitute a quorum for the transaction of business. Except as otherwise required by law, the certificate of incorporation or these bylaws, the vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board.

Section 2.08. Action by Telephonic Communications. Members of the Board may participate in a meeting of the Board by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting.

Section 2.09. Adjournment. A majority of the directors present may adjourn any meeting of the Board to another date, time or place, whether or not a quorum is present. No notice need be given of any adjourned meeting unless (a) the date, time and place of the adjourned meeting are not announced at the time of adjournment, in which case notice conforming to the requirements of Section 2.06 of these bylaws applicable to special meetings shall be given to each director, or (b) the meeting is adjourned for more than 24 hours, in which case the notice referred to in clause (a) shall be given to those directors not present at the announcement of the date, time and place of the adjourned meeting.

Section 2.10. Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if all members of the Board consent thereto in writing or by electronic transmission, and such writing or writings or electronic transmissions are filed with the minutes of proceedings of the Board. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 2.11. Regulations. To the extent consistent with applicable law, the certificate of incorporation and these bylaws, the Board may adopt such rules and regulations for the conduct of meetings of the Board and for the management of the property, affairs and business of the corporation as the Board may deem appropriate. The Board may elect from among its members a chairperson and one or more vice-chairpersons to preside over meetings and to perform such other duties as may be designated by the Board.

Section 2.12. Resignations of Directors. Any director may resign at any time by submitting an electronic transmission or by delivering a written notice of resignation, signed by such director, to the President or the Secretary. Such resignation shall take effect upon delivery unless the resignation specifies a later effective date or an effective date determined upon the happening of a specified event.

Section 2.13. Removal of Directors. Any director may be removed at any time, either for or without cause, upon the affirmative vote of the holders of a majority of the outstanding shares of stock of the corporation entitled to vote generally for the election of directors, acting at a stockholder meeting or by written consent in accordance with the DGCL and these bylaws. Any vacancy in the Board caused by any such removal may be filled at such meeting (or in the written instrument effecting the removal, if the removal was effected by consent without a meeting) by the stockholders entitled to vote for the election of the director so removed.

Section 2.14. Vacancies and Newly Created Directorships. Except as provided in Section 2.13, any vacancies or newly created directorships may be filled only by a vote of the stockholders at any regular or special meeting of the stockholders. A director elected to fill a vacancy or a newly created directorship shall hold office until his or her successor has been elected and qualified or until his or her earlier death, resignation or removal.

Section 2.15. Compensation. The directors shall be entitled to compensation for their services to the extent approved by the stockholders at any regular or special meeting of the stockholders. The Board may by resolution determine the expenses in the performance of such services for which a director is entitled to reimbursement.

Section 2.16. Reliance on Accounts and Reports, etc. A director, as such or as a member of any committee designated by the Board, shall in the performance of his or her duties be fully protected in relying in good faith upon the records of the corporation and upon information, opinions, reports or statements presented to the corporation by any of the corporation's officers or employees, or committees designated by the Board, or by any other person as to the matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the corporation.

ARTICLE III

COMMITTEES

Section 3.01. Designation of Committees. The Board may designate one or more committees. Each committee shall consist of such number of directors as from time to time may be fixed by the Board, and shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the corporation to the extent delegated to such committee by the Board but no committee shall have any power or authority as to (a) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, (b) adopting, amending or repealing any of these bylaws or (c) as may otherwise be excluded by law or by the certificate of incorporation, and no committee may delegate any of its power or authority to a subcommittee unless so authorized by the Board.

Section 3.02. Members and Alternate Members. The members of each committee and any alternate members shall be selected by the Board. The Board may provide that the members and alternate members serve at the pleasure of the Board. An alternate member may replace any absent or disqualified member at any meeting of the committee. An alternate member shall be given all notices of committee meetings, may attend any meeting of the committee, but may count towards a quorum and vote only if a member for whom such person is an alternate is absent or disqualified. Each member (and each alternate member) of any committee shall hold office only until the time he or she shall cease for any reason to be a director, or until his or her earlier death, resignation or removal.

Section 3.03. Committee Procedures. A quorum for each committee shall be a majority of its members, unless the committee has only one or two members, in which case a quorum shall be one member, or unless a greater quorum is established by the Board. The vote of a majority of the committee members present at a meeting at which a quorum is present shall be the act of the committee. Each committee shall keep regular minutes of its meetings and report to the Board when required. The Board may adopt other rules and regulations for the government of any committee not inconsistent with the provisions of these bylaws, and each committee may adopt its own rules and regulations of government, to the extent not inconsistent with these bylaws or rules and regulations adopted by the Board.

Section 3.04. Meetings and Actions of Committees. Meetings and actions of each committee shall be governed by, and held and taken in accordance with, the provisions of the following sections of these bylaws, with such bylaws being deemed to refer to the committee and its members in lieu of the Board and its members:

- (a) Section 2.04 (to the extent relating to place and time of regular meetings);
- (b) Section 2.05 (relating to special meetings);
- (c) Section 2.06 (relating to notice and waiver of notice);
- (d) Sections 2.08 and 2.10 (relating to telephonic communication and action without a meeting); and
- (e) Section 2.09 (relating to adjournment and notice of adjournment).

Special meetings of committees may also be called by resolution of the Board.

Section 3.05. Resignations and Removals. Any member (and any alternate member) of any committee may resign from such position at any time by delivering a written notice of resignation, signed by such member, to the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any member (and any alternate member) of any committee may be removed from such position by the Board at any time, either for or without cause.

Section 3.06. Vacancies. If a vacancy occurs in any committee for any reason, the remaining members (and any alternate members) may continue to act if a quorum is present. A committee vacancy may be filled only by the Board.

ARTICLE IV

OFFICERS

Section 4.01. Officers. The Board shall elect a President and a Secretary as officers of the corporation. The Board may also elect a Treasurer, one or more Vice Presidents, Assistant Secretaries and Assistant Treasurers, and such other officers and agents as the Board may determine. In addition, the Board from time to time may delegate to any officer the power to appoint subordinate officers or agents and to prescribe their respective rights, terms of office, authorities and duties. Any action by an appointing officer may be superseded by action by the Board. Any number of offices may be held by the same person, except that one person may not hold both the office of President and the office of Secretary. No officer need be a director of the corporation.

Section 4.02. Election. The officers of the corporation elected by the Board shall serve at the pleasure of the Board. Officers and agents appointed pursuant to delegated authority as provided in Section 4.01 (or, in the case of agents, as provided in Section 4.06) shall hold their offices for such terms as may be determined from time to time by the appointing officer. Each officer shall hold office until his or her successor has been elected or appointed and qualified, or until his or her earlier death, resignation or removal.

Section 4.03. Compensation. The salaries and other compensation of all officers and agents of the corporation shall be fixed by the Board or in the manner established by the Board.

Section 4.04. Removal and Resignation; Vacancies. Any officer may be removed for or without cause at any time by the Board. Any officer granted the power to appoint subordinate officers and agents as provided in Section 4.01 may remove any subordinate officer or agent appointed by such officer, for or without cause. Any officer or agent may resign at any time by delivering notice of resignation, either in writing signed by such officer or by electronic transmission, to the Board or the President. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any vacancy occurring in any office of the corporation by death, resignation, removal or otherwise, may be filled by the Board or by the officer, if any, who appointed the person formerly holding such office.

Section 4.05. Authority and Duties of Officers. An officer of the corporation shall have such authority and shall exercise such powers and perform such duties (a) as may be required by law, (b) to the extent not inconsistent with law, as are specified in these bylaws, (c) to the extent not inconsistent with law or these bylaws, as may be specified by resolution of the Board, and (d) to the extent not inconsistent with any of the foregoing, as may be specified by the appointing officer with respect to a subordinate officer appointed pursuant to delegated authority under Section 4.01.

Section 4.06. President. The President shall preside at all meetings of the stockholders and directors at which he or she is present, and unless otherwise provided by the Board, shall be the chief executive officer and the chief operating officer of the corporation, shall have general control and supervision of the policies and operations of the corporation and shall see that all orders and resolutions of the Board are carried into effect. Unless otherwise provided by the Board, he or she shall manage and administer the corporation's business and affairs and shall also perform all duties and exercise all powers usually pertaining to the office of a chief executive officer and a chief operating officer of a corporation. He or she shall have the authority to sign, in the name and on behalf of the corporation, checks, orders, contracts, leases, notes, drafts and all other documents and instruments in connection with the business of the corporation. He or she shall have the authority to cause the employment or appointment of such employees or agents of the corporation as the conduct of the business of the corporation may require, to fix their compensation, and to remove or suspend any employee or any agent employed or appointed by any officer or to suspend any agent appointed by the Board. The President shall have the duties and powers of the Treasurer if no Treasurer is elected and shall have such other duties and powers as the Board may from time to time prescribe.

Section 4.07. Vice Presidents. If one or more Vice Presidents have been elected, each Vice President shall perform such duties and exercise such powers as may be assigned to him or her from time to time by the Board or the President. In the event of absence or disability of the President, the duties of the President shall be performed, and his or her powers may be exercised, by such Vice President as shall be designated by the Board or, failing such designation, by the Vice President in order of seniority of election to that office.

Section 4.08. Secretary. Unless otherwise determined by the Board, the Secretary shall have the following powers and duties:

- (a) The Secretary shall keep or cause to be kept a record of all the proceedings of the meetings of the stockholders, the Board and any committees thereof in books provided for that purpose.
- (b) The Secretary shall cause all notices to be duly given in accordance with the provisions of these bylaws and as required by law.
- (c) Whenever any committee shall be appointed pursuant to a resolution of the Board, the Secretary shall furnish a copy of such resolution to the members of such committee.
- (d) The Secretary shall be the custodian of the records and of the seal of the corporation and cause such seal (or a facsimile thereof) to be affixed to all certificates representing shares of the corporation prior to the issuance thereof and to all documents and instruments that the Board or any officer of the corporation has determined should be executed under seal, may sign (together with any other authorized officer) any such document or instrument, and when the seal is so affixed he or she may attest the same.
- (e) The Secretary shall properly maintain and file all books, reports, statements, certificates and all other documents and records required by law, the certificate of incorporation or these bylaws.
- (f) The Secretary shall have charge of the stock books and ledgers of the corporation and shall cause the stock and transfer books to be kept in such manner as to show at any time the number of shares of stock of the corporation of each class issued and outstanding, the names (alphabetically arranged) and the addresses of the holders of record of such shares, the number of shares held by each holder and the date as of which each such holder became a holder of record.
- (g) The Secretary shall sign (unless the Treasurer, an Assistant Treasurer or an Assistant Secretary shall have signed) certificates representing shares of the corporation the issuance of which shall have been authorized by the Board.
- (h) The Secretary shall perform, in general, all duties incident to the office of secretary and such other duties as may be specified in these bylaws or as may be assigned to the Secretary from time to time by the Board or the President.

Section 4.09. Treasurer. Unless otherwise determined by the Board, the Treasurer, if there be one, shall be the chief financial officer of the corporation and shall have the following powers and duties:

- (a) The Treasurer shall have charge and supervision over and be responsible for the moneys, securities, receipts and disbursements of the corporation, and shall keep or cause to be kept full and accurate records thereof.
- (b) The Treasurer shall cause the moneys and other valuable effects of the corporation to be deposited in the name and to the credit of the corporation in such banks or trust companies or with such bankers or other depositories as shall be determined by the Board or the President, or by such other officers of the corporation as may be authorized by the Board or the President to make such determinations.

(c) The Treasurer shall cause the moneys of the corporation to be disbursed by checks or drafts (signed by such officer or officers or such agent or agents of the corporation, and in such manner, as the Board or the President may determine from time to time) upon the authorized depositaries of the corporation and cause to be taken and preserved proper vouchers for all moneys disbursed.

(d) The Treasurer shall render to the Board or the President, whenever requested, a statement of the financial condition of the corporation and of the transactions of the corporation, and render a full financial report at the annual meeting of the stockholders, if called upon to do so.

(e) The Treasurer shall be empowered from time to time to require from all officers or agents of the corporation reports or statements giving such information as he or she may desire with respect to any and all financial transactions of the corporation.

(f) The Treasurer may sign (unless an Assistant Treasurer or the Secretary or an Assistant Secretary shall have signed) certificates representing shares of stock of the corporation the issuance of which shall have been authorized by the Board.

(g) The Treasurer shall perform, in general, all duties incident to the office of treasurer and such other duties as may be specified in these bylaws or as may be assigned to the Treasurer from time to time by the Board or the President.

ARTICLE V

CAPITAL STOCK

Section 5.01. Certificates of Stock, Uncertificated Shares. The shares of the corporation shall be represented by certificates except to the extent that the Board has provided by resolution that some or all of any or all classes or series of the stock of the corporation shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the Board, every holder of stock in the corporation represented by certificates shall be entitled to have, and every holder of uncertificated shares may at the direction of the Board be permitted to receive upon request, a certificate signed by, or in the name of the corporation by the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, representing the number of shares registered in the name of such holder. Such certificate shall be in such form as the Board may determine, to the extent consistent with applicable law, the certificate of incorporation and these bylaws.

Section 5.02. Facsimile Signatures. Any or all signatures on the certificates referred to in Section 5.01 of these bylaws may be in facsimile form. If any officer who has signed, or whose facsimile signature has been placed upon, a certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he or she were such officer at the date of issue.

Section 5.03. Lost, Stolen or Destroyed Certificates. A new certificate may be issued in place of any certificate theretofore issued by the corporation alleged to have been lost, stolen or destroyed only upon delivery to the corporation of an affidavit of the owner or owners (or their legal representatives) of such certificate, setting forth such allegation, and a bond or other undertaking as may be satisfactory to a financial officer of the corporation designated by the Board to indemnify the corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

Section 5.04. Transfer of Stock.

(a) Transfer of shares represented by certificates shall be made on the books of the corporation upon surrender to the corporation of a certificate for shares, duly endorsed or accompanied by appropriate evidence of succession, assignment or authority to transfer, and otherwise in compliance with applicable law. Transfers of uncertificated shares shall be made on the books of the corporation as provided by applicable law. Within a reasonable time after the transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to Sections 151, 156, 202(a) and 218(a) of the DGCL. Subject to applicable law, the provisions of the certificate of incorporation and these bylaws, the Board may prescribe such additional rules and regulations as it may deem appropriate relating to the issue, transfer and registration of shares of the corporation.

(b) The corporation may enter into agreements with stockholders to restrict the transfer of stock of the corporation in any manner not prohibited by the DGCL.

Section 5.05. Registered Stockholders. Prior to due surrender of a certificate for registration of transfer, or due delivery of instructions for the registration of transfer of uncertificated shares, the corporation may treat the registered owner as the person exclusively entitled to receive dividends and other distributions, to vote, to receive notice and otherwise to exercise all the rights and powers of the owner of the shares represented by such certificate or of such uncertificated shares, and the corporation shall not be bound to recognize any equitable or legal claim to or interest in such shares on the part of any other person, whether or not the corporation shall have notice of such claim or interests. If a transfer of shares is made for collateral security, and not absolutely, this fact shall be so expressed in the entry of the transfer if, when the certificates are presented to the corporation for transfer or uncertificated shares are requested to be transferred, both the transferor and transferee request the corporation to do so.

ARTICLE VI

INDEMNIFICATION

Section 6.01. Indemnification.

(a) Third Party Actions. The corporation shall indemnify any person who was or is a party or is threatened to be made a party to, or is otherwise involved in, any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, including all appeals (other than an action, suit or proceeding by or in the right of the corporation) by reason of the fact that such person, or a person for whom such person is the legal representative, is or was a director or officer of the corporation or, while a director or officer of the corporation, is or was serving at the request of the corporation as a director, officer, employee, trustee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (a "Covered Person"), to the fullest extent permitted by law, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, trustee or agent, or in any other capacity while serving as a director, officer, employee, trustee or agent, including indemnifying such person against expenses (including attorneys' fees), judgments, decrees, fines, penalties, and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful; provided, however, except for proceedings to enforce rights to indemnification and advancement of expenses, the corporation shall be required to indemnify a Covered Person in connection with any actions, suits or proceedings (or part thereof) initiated by such person only if such action, suit or proceeding (or part thereof) was authorized by the Board. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith or in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(b) Actions By or in the Right of the Corporation. The corporation shall indemnify any person who was or is a party or is threatened to be made a party to, or is otherwise involved in, any threatened, pending, or completed action or suit, including all appeals, by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person, or a person for whom such person is the legal representative, is or was a director or officer of the corporation or, while a director or officer of the corporation, is or was serving at the request of the corporation as a director, officer, employee, trustee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan, to the fullest extent permitted by law, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, trustee or agent, or in any other capacity while serving as a director, officer, employee, trustee or agent, including indemnifying such person against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been finally adjudged to be liable to the corporation unless and only to the extent that the court in which such action or suit was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as such court shall deem proper. Notwithstanding the foregoing, except for proceedings to enforce rights to indemnification and advancement of expenses, the corporation shall be required to indemnify a Covered Person in connection with any actions, suits or proceedings (or part thereof) initiated by such person only if such action, suit or proceeding (or part thereof) was authorized by the Board.

Section 6.02. Advancement of Expenses. The corporation shall, to the fullest extent not prohibited by applicable law as it presently exists or may hereafter be amended, pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition; provided, however, that to the extent required by applicable law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined by final judicial decision from which there is no further right to appeal that the Covered Person is not entitled to be indemnified under Section 6.01 or otherwise. Notwithstanding the foregoing, except for proceedings to enforce rights to indemnification and advancement of expenses, the corporation shall be required to advance expenses to a Covered Person in connection with any actions, suits or proceedings (or part thereof) initiated by such person only if such action, suit or proceeding (or part thereof) was authorized by the Board. The corporation may authorize any counsel for the corporation to represent (subject to applicable conflict of interest considerations) such present or former director or officer in any proceeding, whether or not the corporation is a party to such proceeding.

Section 6.03. Procedure for Indemnification. Any indemnification under Section 6.01 of these bylaws or any advance of expenses under Section 6.02 of these bylaws shall be made only against a written request therefor (together with supporting documentation) submitted by or on behalf of the person seeking indemnification or advance. Indemnification may be sought by a person under Section 6.01 of these bylaws in respect of a proceeding only to the extent that both the liabilities for which indemnification is sought and all portions of the proceeding relevant to the determination of whether the person has satisfied any appropriate standard of conduct have become final. A person seeking indemnification or advance of expenses may seek to enforce such person's rights to indemnification or advance of expenses (as the case may be) in the Delaware Court of Chancery to the extent all or any portion of a requested indemnification has not been granted within 60 days of, or to the extent all or any portion of a requested advance of expenses has not been granted within 20 days of, the submission of such request. All expenses (including reasonable attorneys' fees) incurred by such person in connection with successfully establishing such person's right to indemnification or advancement of expenses under this Article, in whole or in part, shall also be indemnified by the corporation.

Section 6.04. Burden of Proof.

(a) In any proceeding brought to enforce the right of a person to receive indemnification to which such person is entitled under Section 6.01 of these bylaws, the corporation has the burden of demonstrating that the standard of conduct applicable under the DGCL or other applicable law was not met. A prior determination by the corporation (including its Board or any committee thereof, its independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct does not itself constitute evidence that the claimant has not met the applicable standard of conduct.

(b) In any proceeding brought to enforce a claim for advances to which a person is entitled under Section 6.02 of these bylaws, the person seeking an advance need only show that he or she has satisfied the requirements expressly set forth in Section 6.02 of these bylaws.

(c) If successful in whole or in part in any proceeding brought to enforce the right of a person to receive indemnification to which such person is entitled under Section 6.01 of these bylaws or to enforce a claim for advances to which a person is entitled under Section 6.02 of these bylaws, the Covered Person shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by applicable law.

Section 6.05. Contract Right; Non-Exclusivity; Survival.

(a) The rights to indemnification and advancement of expenses provided by this Article VI shall be deemed to be separate contract rights between the corporation and each Covered Person who serves in any such capacity at any time while these provisions as well as the relevant provisions of the DGCL are in effect, and no repeal or modification of any of these provisions or any relevant provisions of the DGCL shall adversely affect any right or obligation of such director or officer existing at the time of such repeal or modification with respect to any state of facts then or previously existing or any proceeding previously or thereafter brought or threatened based in whole or in part upon any such state of facts. Such “contract rights” may not be modified retroactively as to any present or former director or officer without the consent of such Covered Person.

(b) The rights to indemnification and advancement of expenses provided by this Article VI shall not be deemed exclusive of any other indemnification or advancement of expenses to which a Covered Person seeking indemnification or advancement of expenses may be entitled by any agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

(c) The rights to indemnification and advancement of expenses provided by this Article VI to any Covered Person shall inure to the benefit of the heirs, executors and administrators of such person.

Section 6.06. Insurance. The corporation may purchase and maintain insurance on behalf of any person who is or was or has agreed to become a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person or on such person’s behalf in any such capacity, or arising out of such person’s status as such, whether or not the corporation would have the power to indemnify such person against such liability under the provisions of this Article.

Section 6.07. Employees and Agents. The Board, or any officer authorized by the Board generally or in the specific case to make indemnification decisions, may cause the corporation to indemnify any present or former employee or agent of the corporation in such manner and for such liabilities as the Board may determine, up to the fullest extent permitted by the DGCL and other applicable law.

Section 6.08. Interpretation; Severability. Terms defined in Sections 145(h) or (i) of the DGCL have the meanings set forth in such sections when used in this Article VI. If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each Covered Person as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, including an action by or in the right of the corporation, to the fullest extent permitted by any applicable portion of this Article that shall not have been invalidated and to the fullest extent permitted by applicable law.

Section 6.09. Coordination of Claims. Any Covered Person entitled to indemnification and/or advancement of expenses, in each case pursuant to Section 6.01 and/or Section 6.02, may have certain rights to indemnification, advancement and/or insurance provided by one or more persons with whom or which such Covered Person may be associated. The corporation hereby acknowledges and agrees that (i) the corporation shall be the indemnitor of first resort with respect to any proceeding, expense, liability or matter that is the subject of Section 6.01, (ii) the corporation shall be primarily liable for all such obligations and any indemnification afforded to a Covered Person in respect of a proceeding, expense, liability or matter that is the subject of Sections 6.01 and 6.02, whether created by law, organizational or constituent documents, contract or otherwise, (iii) any obligation of any persons with whom or which a Covered Person may be associated to indemnify such Covered Person and/or advance expenses or liabilities to such Covered Person in respect of any proceeding shall be secondary to the obligations of the corporation hereunder, (iv) the corporation shall be required to indemnify each Covered Person and advance expenses to each Covered Person hereunder to the fullest extent provided herein without regard to any rights such Covered Person may have against any other person with whom or which such Covered Person may be associated or insurer of any such person, and (v) the corporation irrevocably waives, relinquishes and releases any other person with whom or which a Covered Person may be associated from any claim of contribution, subrogation or any other recovery of any kind in respect of amounts paid by the corporation hereunder.

ARTICLE VII

OFFICES

Section 7.01. Registered Office. The registered office of the corporation in the State of Delaware shall be located at the location provided in the corporation's certificate of incorporation.

Section 7.02. Other Offices. The corporation may maintain offices or places of business at such other locations within or without the State of Delaware as the Board may from time to time determine or as the business of the corporation may require.

ARTICLE VIII
GENERAL PROVISIONS

Section 8.01. Dividends.

(a) Subject to any applicable provisions of law and the certificate of incorporation, dividends upon the shares of the corporation may be declared by the Board at any regular or special meeting of the Board and any such dividend may be paid in cash, property, or shares of the corporation's stock.

(b) A member of the Board, or a member of any committee designated by the Board shall be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of its officers or employees, or committees of the Board, or by any other person as to matters the director reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the corporation, as to the value and amount of the assets, liabilities and/or net profits of the corporation, or any other facts pertinent to the existence and amount of surplus or other funds from which dividends might properly be declared and paid.

Section 8.02. Reserves. There may be set apart out of any funds of the corporation available for dividends such sum or sums as the Board from time to time may determine proper as a reserve or reserves for meeting contingencies, equalizing dividends, repairing or maintaining any property of the corporation or for such other purpose or purposes as the Board may determine conducive to the interest of the corporation, and the Board may similarly modify or abolish any such reserve.

Section 8.03. Execution of Instruments. Except as otherwise required by law or the certificate of incorporation, the Board or any officer of the corporation authorized by the Board may authorize any other officer or agent of the corporation to enter into any contract or execute and deliver any instrument in the name and on behalf of the corporation. Any such authorization must be in writing or by electronic transmission and may be general or limited to specific contracts or instruments.

Section 8.04. Voting as Stockholder. Unless otherwise determined by resolution of the Board, the President or any Vice President shall have full power and authority on behalf of the corporation to attend any meeting of stockholders of any corporation in which the corporation may hold stock, and to act, vote (or execute proxies to vote) and exercise in person or by proxy all other rights, powers and privileges incident to the ownership of such stock at any such meeting, or through action without a meeting. The Board may by resolution from time to time confer such power and authority (in general or confined to specific instances) upon any other person or persons.

Section 8.05. Fiscal Year. The fiscal year of the corporation shall commence on the first day of January of each year (except for the corporation's first fiscal year which shall commence on the date of incorporation) and shall terminate in each case on December 31.

Section 8.06. Seal. The seal of the corporation shall be circular in form and shall contain the name of the corporation, the year of its incorporation and the words “Corporate Seal” and “Delaware”. The form of such seal shall be subject to alteration by the Board. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or reproduced, or may be used in any other lawful manner.

Section 8.07. Books and Records; Inspection. Except to the extent otherwise required by law, the books and records of the corporation shall be kept at such place or places within or without the State of Delaware as may be determined from time to time by the Board.

Section 8.08. Electronic Transmission. “Electronic transmission”, as used in these bylaws, means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

ARTICLE IX

AMENDMENT OF BYLAWS

Section 9.01. Amendment. These bylaws may be amended, altered or repealed by the Board at any regular or special meeting of the Board without the assent or vote of the stockholders.

ARTICLE X

CONSTRUCTION

Section 10.01. Construction. In the event of any conflict between the provisions of these bylaws as in effect from time to time and the provisions of the certificate of incorporation of the corporation as in effect from time to time, the provisions of such certificate of incorporation shall be controlling.



Clayton, Dubilier & Rice Completes Acquisition of Focus Financial Partners

NEW YORK, NY – August 31, 2023 – Focus Financial Partners Inc. ("Focus" or the "Company"), a leading partnership of independent, fiduciary wealth management firms, Clayton, Dubilier & Rice, LLC ("CD&R"), and Stone Point Capital LLC ("Stone Point") today announced that they have completed the previously announced acquisition of Focus by funds affiliated with CD&R and Stone Point in an all-cash transaction for an enterprise value in excess of \$7 billion.

"We are thrilled to mark this significant achievement in Focus's journey," said Rudy Adolf, Founder and CEO of Focus. "Our partnership with CD&R and Stone Point opens doors to new opportunities, enhanced resources, and increased value for our partner firms and their clients. We look forward to this next chapter of growth and evolution."

"We are excited to work alongside the Focus leadership team to build on the tremendous foundation they have already established by investing in the Company's capabilities, operations and talent within Focus and across its partner firms," said Dan Glaser, Chairman of Focus and an Operating Partner at CD&R. "We have deep appreciation for the entrepreneurial flair that exists within Focus, and we look forward to weaving the partnership closer together with a common purpose, shared capabilities and greater collaboration."

"We look forward to continuing to work with the Focus team as they take advantage of the enhanced financial and operating flexibility they will have as a private company," said Faye Muhtadie, Managing Director and Co-Head of Private Equity at Stone Point. "As a leader in independent wealth management, Focus is uniquely positioned to capitalize on the trends driving industry growth and consolidation."

With the completion of the transaction, Focus's common stock has ceased trading and is no longer listed on NASDAQ.

Advisors

Jefferies LLC and Goldman Sachs & Co. LLC served as financial advisors and Potter Anderson & Corroon LLP served as legal counsel to the Special Committee of the Focus Board of Directors. Vinson & Elkins LLP, K&L Gates LLP and Davis Wright Tremaine LLP served as legal counsel to Focus.

Moelis & Company LLC, RBC Capital Markets, Truist Securities, Inc., BofA Securities, BMO Capital Markets, Citizens Capital Markets, Inc., Fifth Third Securities, and MUFG served as financial advisors to CD&R and Stone Point. Kirkland & Ellis LLP and Debevoise & Plimpton LLP served as legal counsel to CD&R on the transaction. Simpson Thacher & Bartlett LLP served as legal counsel to Stone Point.

About Focus Financial Partners Inc.

Focus Financial Partners Inc. is a leading partnership of independent, fiduciary wealth management firms. Focus provides access to best practices, resources and continuity planning for its partner firms who serve individuals, families, employers and institutions with comprehensive wealth management services. Focus partner firms maintain their operational independence, while they benefit from the synergies, scale, economics and best practices offered by Focus to achieve their business objectives. For more information about Focus, please visit focusfinancialpartners.com.

About Clayton, Dubilier & Rice

Clayton, Dubilier & Rice is a private investment firm with a strategy predicated on building stronger, more profitable businesses across a broad range of industries, including Industrials, Healthcare, Business Services, Consumer, Technology, and Financial Services. Since its inception in 1978, CD&R has managed the investment of more than \$40 billion in over 100 companies with an aggregate transaction value of more than \$175 billion. For more information on CD&R, please visit www.cdr-inc.com and follow the Firm's activities through LinkedIn and @CDRBuilds on X/Twitter.

About Stone Point

Stone Point is an investment firm based in Greenwich, CT, with over \$50 billion of assets under management. Stone Point targets investments in companies in the global financial services industry and related sectors. The firm invests in a number of alternative asset classes, including private equity through its flagship Trident Funds. Stone Point also manages both liquid and private credit funds and managed accounts. In addition, Stone Point Capital Markets supports our firm, portfolio companies and other clients by providing dedicated financing solutions. For more information on Stone Point, please visit www.stonepoint.com.

Cautionary Note Concerning Forward-Looking Statements

This release contains certain forward-looking statements that reflect Focus's current views with respect to certain current and future events. These forward-looking statements are, and will be, subject to many risks, uncertainties and factors relating to Focus's operations and business environment which may cause future events to be materially different from these forward-looking statements or anything implied therein. Any forward-looking statements in this release are based upon information available to Focus on the date of this release. Focus does not undertake to publicly update or revise its forward-looking statements even if experience or future changes make it clear that any statements expressed or implied therein will not be realized. Additional information on risk factors that could affect Focus may be found in Focus's filings with the Securities and Exchange Commission.

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