UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21364

In the Matter of **MARCUS BEAM** **Respondent.**	**DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AND IMPOSITION OF SANCTIONS AND MEMORANDUM OF LAW IN SUPPORT**

Pursuant to Rule 250(b) of the Commission's Rules of Practice, the Division of Enforcement respectfully moves for summary disposition and imposition of sanctions against Respondent Marcus Beam ("Beam").

I. Introduction

This follow-on proceeding arises from Beam's guilty plea on March 16, 2023 to one count of wire fraud in violation of Title 18, United States Code, Section 1343, and an order accepting the plea and adjudging Beam guilty by the United States District Court for the Northern District of Illinois, in the matter styled as *US v. Beam*, Crim. No. 1:19-cr-00698. The criminal indictment charged Beam with 10 counts of mail and wire fraud stemming from his illegal solicitation and receipt of client funds from no later than March 2015 through at least October 2019 in connection with Chase Private Equity a/k/a New World Capital ("CPE"), a fund that Beam advised as to the value of securities and as to the advisability of investing in, purchasing, or selling securities. During

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that same time period, Beam also advised individual clients as to the value of securities and as to the advisability of investing in, purchasing, or selling securities.[1]

II. Factual Background

As detailed at length in the Indictment and Plea Agreement (Exhibits 2-3), beginning in or around March of 2015 and continuing through at least October 2019, Beam devised, intended to devise, and participated in a scheme to defraud investors and others and to obtain money and property from those investors by means of materially false and fraudulent pretenses, representations, and promises.[2]

Beam held himself out as an investment adviser and as the chief executive officer, president, manager, and owner of CPE. He solicited investors through CPE and represented that their funds would be invested in pre-IPO shares and in shares of other public companies, such as

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[1] Under Rule 323 of the Commission's Rules of Practice, notice may be taken in this proceeding of "any material fact which might be judicially noticed by a district court of the United States . . . ." The Commission therefore may take notice of the docket report, pleadings, court orders, and other filings in the criminal case. Accordingly, the Division respectfully requests official notice be taken of the following exhibits to this motion:

- Exhibit 1 – Docket Sheet in *US v. Beam*, Crim. No. 1:19-cr-00698;
- Exhibit 2 – Indictment;
- Exhibit 3 – Plea Agreement;
- Exhibit 4 – Transcript of the Plea Hearing;
- Exhibit 5 – Order Entering Judgment of Guilt;
- Exhibit 6 – Division of Enforcement's Rule 230 letter; and
- Exhibit 7 – Declaration of Patrick R. Costello

[2] The criminal proceeding largely mirrored a companion action the Commission filed against Beam in the Northern District of Illinois styled as *SEC v. Beam*, Case No. 19-cv-6458. The Commission's action resulted in entry of a default judgment against him for violations of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a); Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), 17 C.F.R. § 240.10b-5; and Sections 206(1), 206(2), 206(4) and Rule 206(4)-8 of the Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-6(1), (2) (4), 17 C.F.R. § 275.206(4)-8. The district court also entered a judgment for disgorgement, prejudgment interest, and a civil penalty in an amount of approximately $427,000.

Uber and Lyft, as well as precious metals, art, and real estate. Those representations were false, however, because Beam never invested the funds as he promised. Instead, he misappropriated a significant portion of the funds for his own personal benefit. To conceal the fraud, he produced fictitious account statements to investors, falsely showing the funds had been invested as he promised and falsely showing inflated account balances. Beam also falsely told investors that CPE had assets under management of over $95 million and that investors would be able to withdraw their funds at any time.

Among the investors that Beam solicited were women that he had met through online dating sites, family members, and employees, many of whom lost most, if not all, of their retirement savings entrusting funds to Beam. In addition, Beam hired a group of telemarketers in an overseas call center to make cold calls to solicit additional investors. In doing so, he caused the telemarketers to fraudulently represent to prospective investors that they would earn profits by investing with CPE. Beam commingled investors' funds with funds belonging to CPE and then proceeded to use the funds for his own personal expenditures, including, among other things, cash, rent, retail purchases, credit card debt, and auto loans.

III. Procedural History

A. Beam's Guilty Plea and Judgment of Guilt

Beam was arrested in September 2019 on the basis of a criminal complaint and released shortly thereafter on bond at his initial appearance. (Exhibit 1). On January 16, 2020, he was indicted on one count of mail fraud and nine counts of wire fraud, in violation of Title 18, United States Code, Sections 1341 and 1343. (Exhibit 2). The arraignment was scheduled for January 30, 2020, and re-scheduled for February 5, 2020. Beam failed to appear at the arraignment, however, and a bench warrant was issued for his arrest.

The U.S. Marshals Service subsequently located Beam in Bali, Indonesia, and he was detained there in July 2020. He was returned in custody to the Northern District of Illinois on January 27, 2021 and arraigned the same day. On March 16, 2023, Beam pleaded guilty to one count of wire fraud in violation of Title 18, United States Code, Section 1343. (Exhibit 3). That same day, the court entered judgment of guilt against him. (Exhibit 5).

As part of his guilty plea, Beam admitted, among other things, that during the relevant time period, he was associated with CPE; CPE purported to be a fund that he advised as to the value of securities and as to the advisability of investing in, purchasing, or selling securities; he advised individual clients as to the value of securities and as to the advisability of investing in, purchasing, or selling securities; he illegally solicited and received funds from individuals in connection with CPE and promised to invest the funds in pre-IPO shares and other securities; despite that promise, he instead misappropriated a significant portion of the funds for his own benefit; he concealed the misappropriation by fabricating periodic account statements and other documents falsely showing the funds had been invested as he represented and that investors were earning returns; and that when investors sought to redeem their investments, he failed to return the funds. (Exhibit 4).

B. The Follow-on Proceeding

As a result of the criminal conviction, the Commission initiated this follow-on proceeding against Beam on April 11, 2023, pursuant to Section 203(f) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-3(f) (the "Advisers Act"). The Office of the Secretary served Beam with the Order Instituting Proceedings ("OIP") on April 26, 2023, by certified mail in accordance with Rule 141 of the Commission's Rules of Practice. (Exhibit 7). Undersigned counsel for the Division provided a letter to Beam pursuant to Rule 230 of the Commission's Rules of Practice offering him access to the investigative file. (Exhibits 6-7).

When Beam failed to answer the OIP, the Division moved for default on May 22, 2023. The Commission then issued two Show Cause Orders – the first on June 29, 2023 and the second on August 24, 2023 – giving Beam ultimately until October 10, 2023 to show cause why he should not be deemed to be in default and why this proceeding should not be determined against him.

The Division filed a Status Report on October 23, 2023 (the "October Status Report"), advising the Commission that Beam had failed to file the required response to the Show Cause Orders. The Division attached as an exhibit to its report a copy of the Commission's publicly-available docket showing that no response had been filed as of October 23, 2023. Apparently, however, Beam actually had filed a Motion to Vacate Default on September 28, 2023 (the "Motion to Vacate Default"). Among other things, he argued in that motion that he should not be required to file an Answer to the OIP until after his sentencing in the district court action,[3] because doing so before then is "problematic and may implicate Due Process arguments." Beam thus sought to continue this proceeding until after sentencing.

The Division filed a response to the Motion to Vacate Default on November 8, 2023. As noted in the response, the Division was never served with a copy of the Motion to Vacate Default. Instead, the first the Division learned it had been filed was when undersigned counsel checked the Commission's publicly-available docket on November 8, 2023. Notably, as the Division observed in its response, as of the time of filing of the October Status Report, the Commission's publicly-available docket did not show the Motion to Vacate Default as having been filed.

The Commission then issued an Order on November 22, 2023 directing Beam to file a reply by December 20, 2023 to the Division's response to the Motion to Vacate Default.

[3] Sentencing in the district court action originally was rescheduled for December 21, 2023, but has since been continued to March 27, 2024. (Exhibit 1).

On December 4, 2023, the Division received a response from Beam to the October Status Report. The Division filed a copy of that response with the Commission on December 5, 2023 as part of another status report. The Division noted in that latter status report that Beam claimed in his response to have filed an Answer to the OIP on October 11, 2023. Since then, however, the Commission's publicly-available docket has not reflected any answer as having been filed.

Nevertheless, the Division recently received from Beam a document labeled "Respondent's Answer" dated December 19, 2023 that appears actually to be Beam's Answer to the OIP – despite his previous protest in the Motion to Vacate Default to the act of having to file an answer in advance of sentencing. The Division filed a copy of the Answer with the Commission on January 18, 2024.

C. Beam's Answer to the OIP

In his Answer, Beam admits to pleading guilty in the district court action on March 16, 2023 to one count of wire fraud in violation of Title 18, United States Code, Section 1343. He also stipulates to the facts set forth in the plea agreement (Exhibit 3) as summarized in Sections II and III.A above. He then devotes the remainder of the Answer toward summarizing the arguments reserved by him and by the government to be considered by the district court at sentencing, and then proceeds to dispute the Commission's entitlement in this follow-on proceeding to "disgorgement, restitution, civil penalty, or fine."

IV. Standard for Summary Disposition

Rule 250(b) of the Commission's Rules of Practice provides that after a respondent's answer has been filed and documents have been made available for inspection and copying under Rule 230, a party may move for summary disposition on any or all of its claims. *See* 17 C.F.R. § 201.250(b). The motion may be granted if there is no genuine issue with regard to any material fact and the moving party is entitled to summary disposition as a matter of law. *Id.*

The Commission has "repeatedly upheld the use of summary disposition" where, as here, the respondent has been convicted of an offense listed in Section 203 of the Advisers Act and "the sole determination is the proper sanction, and no material fact is genuinely disputed." *Gary M. Kornman*, Rel. No. 59403, 2009 WL 367635, at *10 (Feb. 13, 2009), *pet. denied,* 592 F.3d 173 (D.C. Cir. 2010) (collecting cases); *see also Charles Trento*, Rel. No. 8391, 2004 WL 329040, at *2 (Feb. 23, 2004). Under Commission precedent, the circumstances in which summary disposition is inappropriate in a follow-on proceeding involving fraud "will be rare." *Efim Aksanov*, Initial Dec. Rel. No. 1000, 2016 WL 1444454, at *2 (Apr. 12, 2016) (citing *John S. Brownson*, Exchange Act Rel. No. 46161 (July 3, 2002), 55 S.E.C. 1023, 1028 n.12, *pet. denied,* 66 F. App'x 687 (9th Cir. 2003)).

V. The Commission Should Enter an Associational Bar

The Commission should bar Beam from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Section 203(f) of the Advisers Act authorizes the Commission to impose such an associational bar on any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated, with an investment adviser, if such a bar is in the public interest and if the person, among others things, has been convicted of violating any offense specified in Section 203(e) of the Advisers Act within ten years of the commencement of proceedings before the Commission. *See* 15 U.S.C. § 80b-3(f); *see also Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *32 (July 26, 2013) (holding that it is "well established that [the Commission is] authorized to sanction an associated person of an unregistered broker-dealer or investment adviser in a follow-on administrative proceeding"). Both of these elements are met here.

A. Beam has been Convicted of the Requisite Violation

As noted above, Beam pleaded guilty on March 16, 2023 to one count of wire fraud in violation of Title 18, United States Code, Section 1343. (Exhibit 3). That same day, the court entered judgment of guilt against him. (Exhibit 5). A conviction for that offense is one of the offenses set forth in Section 203(e) of the Advisers Act that triggers the associational bar described in Section 203(f) of the Advisers Act. *See* 15 U.S.C. §§ 80b-3(e)(2)(D), 80b-3(f).[4] The Advisers Act defines "conviction" as a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed. *See* 15 U.S.C. § 80b-2(a)(6).

B. An Associational Bar is in the Public Interest

In assessing the public interest, the Commission considers such factors as: (i) the egregiousness of the respondent's actions; (ii) the isolated or recurrent nature of the infraction; (iii) the degree of scienter involved; (iv) the sincerity of the respondent's assurances against future violations; (v) the respondent's recognition of the wrongful nature of his or her conduct; and (vi) the likelihood the respondent's occupation will present opportunities for future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) (*quoting SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). Additionally, the Commission considers the age of the violation and the degree of harm to

[4] Section 203(f) also authorizes an associational bar if the conviction results from a crime (i) involving the purchase or sale of a security, the making of a false report, or misappropriation of funds; (ii) arising out of the conduct of the business of an investment adviser; or (iii) punishable in general by imprisonment for one or more years. *See* 15 U.S.C. §§ 80b-3(e)(2)-(3), 80b-3(f). Under any of these iterations, or the violation of Title 18, United States Code, Section 1343 delineated above, the criminal conduct at issue in this proceeding for which Beam was convicted would amount to qualifying conduct sufficient to justify imposition of the associational bar.

investors and the marketplace resulting from the violation. *Marshall E. Melton*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at *5-6 (July 25, 2003).

But the Commission often has emphasized the public interest determination extends beyond consideration of the particular investors affected by the respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. *See Christopher A. Lowry*, 55 S.E.C. 1133, 1145 (2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003); *Arthur Lipper Corp.*, 46 S.E.C. 78, 100 (1975). Moreover, the public interest requires a strong sanction when the respondent's past misconduct involves fraud because opportunities for dishonesty frequently recur in the securities business. *See Richard C. Spangler, Inc.*, 46 S.E.C. 238, 252 (1976). Here, the factors weigh heavily in favor of an associational bar against Beam.

First, as discussed above, Beam's clients have lost most, if not all, of their retirement savings by entrusting the funds to him. The severity of this loss cannot be overstated. Second, Beam acted with a high degree of scienter, falsely aggrandizing himself as an experienced adviser with non-existent funds under management, and then even going so far as to fabricate account statements to conceal the fact he had used his clients' hard-earned retirement savings for his own personal enjoyment. Third, Beam's misconduct was not isolated – indeed, it lasted for years and encompassed repeated instances of fraud on numerous clients. And fourth, given that Beam's purported advisory business spanned multiple funds, involved a call center overseas, and was financially beneficial to him, he is likely to exploit similar opportunities to commit fraud in the future unless barred from the industry.

Although Beam claims in his Answer to have "demonstrated a recognition and affirmative acceptance of personal responsibility for his conduct," any such contrition would be for the district court to consider at sentencing – but it should not be given any consideration in the Commission's

determination of the associational bar in this follow-on proceeding. As discussed at length above, Beam can no longer be trusted in the advisory business – whether he is contrite or not – and the Commission cannot have any assurances that he will not violate the federal securities laws again given the chance to do so. Moreover, Beam has not offered any explanation as to why he should not be barred from the industry.[5]

The combination of all these factors, coupled with the recency of the offense and the impact on the public-at-large, should lead the Commission to conclude that an associational bar is necessary. Such a bar "will prevent [Beam] from putting investors at further risk and serve as a deterrent to others from engaging in similar misconduct." *Montford & Co*., Rel. No. 3829, 2014 SEC LEXIS 1529, at *51 (May 2, 2014), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015).

Ultimately, the securities industry "relies on the fairness and integrity of all persons associated with each of the professions covered by the collateral bar to forgo opportunities to defraud and abuse other market participants." *John W. Lawton*, Investment Adviser Act Rel. No. 3513, 2012 WL 6208750, at *11 (Dec. 13, 2012). Beam's pattern of blatant misconduct demonstrates that he is incapable of such fairness and integrity. He presents a significant risk to the securities market, and should be sanctioned accordingly. *See Bartko v. SEC*, 845 F.3d 1217, 1220-21 (D.C. Cir. 2017) ("Under Dodd-Frank, then, the Commission is now able to bar a securities market participant from

[5] Beam's argument in his Answer disputing the Commission's entitlement to "disgorgement, restitution, civil penalty, or fine" is irrelevant in this follow-on proceeding, as those sanctions are not at issue here. In addition, as noted above, the district court in the Commission's companion action already entered a judgment against him for disgorgement, prejudgment interest, and a civil penalty in an amount of approximately $427,000. *See SEC v. Beam*, Case No. 19-cv-6458. Moreover, it is inappropriate in a follow-on proceeding to revisit the factual basis for or legal challenges to a district court's order, and any such challenge does not create a genuine issue of fact before the Commission. *See John W. Lawton*, Rel. No. 3513, 2012 WL 6208750, at *5 (Dec. 13, 2012).

the six listed classes – broker-dealers, investment advisers, municipal securities dealers, transfers agents, municipal advisors and NRSROs – based on misconduct in only one class.").

VI. Conclusion

For the foregoing reasons, the Division of Enforcement respectfully requests the Commission grant this Motion for Summary Disposition, and impose an associational bar against Beam under Section 203(f) of the Advisers Act.

Date: January 19, 2024

Respectfully submitted,

By: /s/ Patrick R. Costello

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CERTIFICATE OF SERVICE

I certify that on January 19, 2024, I caused to be served the foregoing DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AND IMPOSITION OF SANCTIONS AND MEMORANDUM OF LAW IN SUPPORT on the following persons in the manner indicated:

By US Mail:

Mr. Marcus Beam (Inmate Register No. [redacted])
MCC Chicago
Metropolitan Correctional Center
71 West Van Buren St.
Chicago, IL 60605

/s/ Patrick R. Costello
Patrick R. Costello

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