Initial Decision Release No. 1418
Administrative Proceeding
File No. 3-22307

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of **Epic Capital Wealth Advisors, LLC**	**Initial Decision on Remand** February 11, 2026

Appearances: James P. McDonald, Gregory Kasper, and Nicholas Heinke, Esqs., for the Division of Enforcement, Securities and Exchange Commission

David M. Anthony, President, for Respondent Epic Capital Wealth Advisors, LLC

Before: Dean C. Metry, Chief Administrative Law Judge

Introduction

Epic Capital Wealth Advisors, LLC, has applied to register with the Securities and Exchange Commission as an investment adviser. Epic Capital is a company wholly owned and managed by David M. Anthony, its president and chief compliance officer. Under Section 203(c)(2)(B) of the Investment Advisers Act of 1940, the Commission shall grant Epic Capital's application for registration if the Commission finds that the requirements of Section 203 are satisfied and that Epic Capital is not prohibited from registering as an investment adviser under Section 203A. Conversely, the Commission shall deny registration if it does not make such a finding or if it finds that if Epic Capital were so registered, its registration would be subject to suspension or revocation under Section 203(e). *See* 15 U.S.C. § 80b-3(c)(2)(B).

In a prior initial decision, the previously assigned administrative law judge ruled that the Division of Enforcement had failed to establish that Epic Capital's registration would be subject to suspension or revocation under Section 203(e) because—in its public interest analysis—the Division abandoned trying to prove the alleged violations that formed the basis of the

predicate state-court injunction enjoining Anthony from the securities industry in Colorado but instead argued that denial of Epic Capital's registration was in the public interest because of other, uncharged conduct. *See Epic Capital Wealth Advisors, LLC*, Initial Decision Release No. 1417, 2025 WL 2388717 (ALJ Aug. 8, 2025). On appeal, the Commission did not disturb the judge's findings on that issue but remanded this proceeding and directed that an amended initial decision address two remaining issues to complete the statutory inquiry: whether the requirements of Section 203 are satisfied and whether Epic Capital is not prohibited from registering as an investment adviser under Section 203A. *See Epic Capital*, Advisers Act Release No. 6926, 2025 WL 3257930 (Nov. 21, 2025).

As to the first issue, Epic Capital's application must provide the information and documents required by Section 203. *See* 15 U.S.C. § 80b-3(c)(1)(A)–(H); *Epic Capital*, 2025 WL 3257930, at *5. As to the second issue, the statutory presumption favors state (rather than federal) regulation of small advisory firms, while authorizing the Commission to exempt advisers from the prohibition on Commission registration if the prohibition would be "unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes" of Section 203A. 15 U.S.C. § 80b-3a(c); *see also* S. Rep. No. 104-293, at 2–4 (1996); S. Rep. No. 111-176, at 76 (2010); Rules Implementing Amendments to the Investment Advisers Act of 1940, 62 Fed. Reg. 28,112, 28,113, 28,117 (May 22, 1997). Epic Capital is presumptively prohibited from registering with the Commission because it neither satisfies the required minimum threshold of $100 million in assets under management nor does it advise the types of clients specified by the Advisers Act. *See* 15 U.S.C. § 80b-3a(a)(2)(A) & (B); 17 C.F.R. § 275.203A-1; *Epic Capital*, 2025 WL 3257930, at *2. Epic Capital asserts an exemption from this prohibition under Rule 203A-2(c) for an adviser that "has a reasonable expectation that it would be eligible to register with the Commission within 120 days after the date the investment adviser's registration with the Commission becomes effective." 17 C.F.R. § 275.203A-2(c).

For the reasons set forth in this amended initial decision, Epic Capital's application is denied because it currently has zero assets under management and has no reasonable expectation to reach $100 million within 120 days of its registration becoming effective. Therefore, it is prohibited from registering with the Commission under Section 203A and instead remains subject to state regulation. Moreover, Epic Capital's application contains discrepancies and inaccuracies that would require correction to bring it into compliance with Section 203 but directing further correction would be pointless since it is prohibited from registering.

Procedural History

In September 2024, Anthony filed an application with the Commission to register Epic Capital—which is a Utah limited liability company providing wealth management services—as an investment adviser. Div. Ex. 1 at 1; Div. Ex. 27 at 1. Previously, Anthony had managed money in Colorado through his firm Anthony Capital LLC and several private placement offerings under Regulation D. As recounted in the prior initial decision and the Commission's opinion, Anthony's application to register Epic Capital followed a legal action in Colorado in which he had his investment adviser license suspended in the state and was also barred from offering or selling securities there for 10 years. The bar and license suspension were entered pursuant to Anthony's settlement of the Colorado Securities Commissioner's allegations of securities fraud and unlicensed activity dealing in unregistered securities.

Epic Capital's application with the Commission initially relied on the internet adviser exemption under Rule 203A-2(e). Div. Ex. 1 at 5, 41; Tr. 352–53. Commission staff informed Anthony, in substance, that the exemption applies only if the adviser "[p]rovides investment advice to all of its clients exclusively through an operational interactive website," 17 C.F.R. § 275.203A-2(e), but Anthony intended to also speak to clients. Tr. 344–45, 354, 380. So, in early October 2024, he filed an amended application for Epic Capital, relying instead on the Rule 203A-2(c) exemption. Div. Ex. 2 at 5, 41. After further feedback from Commission staff, he filed, on October 25, 2024, another amended application for Epic Capital, still relying on the Rule 203A-2(c) exemption. Div. Ex. 3 at 5, 12, 21, 38–39. That version is the application at issue in this proceeding.

In November 2024, the Commission issued an order instituting proceedings (OIP) to determine "[w]hether the pending application of Epic Capital for registration as an investment adviser should be denied pursuant to Section 203(c)(2)(B) of the Advisers Act." OIP at 3. In accordance with Section 203(c)(2)(B), this proceeding "shall include notice of the grounds for denial under consideration and opportunity for hearing," among other requirements.[1]

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[1] Section 203(c)(2)(B) also requires that this proceeding "shall be concluded within one hundred twenty days of the date of the filing of the application for registration," although "[t]he Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents." 15 U.S.C. § 80b-3(c)(2)(B); *see also* OIP at 2. The statutory deadline was last extended to October 20, 2025, and lapsed during a government shutdown; the record does not indicate that Epic Capital

(continued…)

15 U.S.C. § 80b-3(c)(2)(B). The grounds specified in the OIP alleged that "[w]ere Epic Capital to be registered as an investment adviser, its registration would be subject to suspension or revocation under Section 203(e) of the Advisers Act" because Anthony—its owner and associated person—had been enjoined from the securities industry in the Colorado action, *Tung Chan v. Anthony*, No. 22-cv-30574 (Colo. Dist. Ct., Denver Cty. Apr. 17, 2023). OIP at 2–3. The OIP further summarized allegations from the underlying complaint in the Colorado action but otherwise did not independently allege that Epic Capital (or Anthony) engaged in particular misconduct.[2] *Id.* at 1–3.

In January 2025, the Commission denied the Division's motion for summary disposition and set this proceeding for an expedited hearing before an administrative law judge. *Epic Capital*, Advisers Act Release No. 6834, 2025 WL 296102 (Jan. 23, 2025). The Commission explained that under Section 203(c)(2)(B), it may deny an application for registration as an investment adviser if it finds: (1) that any person associated with the applicant has been enjoined from acting as an investment adviser, or from engaging in any conduct or practice in connection with that activity; and (2) that such action is in the public interest. *Id.* at *1. The Commission found that although

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consented to a further extension. *See Epic Capital*, Advisers Act Release No. 6909, 2025 WL 2417104 (Aug. 19, 2025); Admin. Proc. Rulings Release No. 6938, 2025 SEC LEXIS 1487 (ALJ May 23, 2025). Nevertheless, as the statute specifies no consequence for noncompliance with the deadline, the Commission retains the power to conduct further proceedings and decide whether to grant or deny registration. *See Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 161 (2003) ("[A] statute directing official action needs more than a mandatory 'shall' before the grant of power can sensibly be read to expire when the job is supposed to be done."); *see also Montford & Co.*, Advisers Act Release No. 3829, 2014 WL 1744130, at *11 & n.76 (May 2, 2014) ("The [Supreme] Court has repeatedly held that congressional enactments that prescribe internal time periods for federal agency action without specifying any consequences for noncompliance do not necessitate dismissal of the action if the agency does not act within the time prescribed." (citing *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 63 (1993); *United States v. Montalvo-Murillo*, 495 U.S. 711, 714 (1990); *Brock v. Pierce Cty.*, 476 U.S. 253, 253 (1986))), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015).

[2] The Commission has repeatedly explained that when an OIP only recounts the allegations of an underlying civil complaint, the OIP does not independently allege that the respondent engaged in particular misconduct. *See, e.g.*, *Mark Allan Plummer*, Exchange Act Release No. 103882, 2025 WL 2573454, at *1 (Sept. 5, 2025).

Anthony was subject to a predicate injunction, there were genuine issues of fact material to the Division's contentions that Anthony committed misconduct and that denial of Epic Capital's application would be in the public interest. *Id.* at *2. In particular, the Commission explained that the Division did not identify any state-court findings entitled to preclusive effect as to Anthony's conduct—noting that the Colorado "injunction against Anthony was entered as part of a settlement and apparently did not require him to admit misconduct." *Id.* at *2 & n.9. Moreover, the Commission explained that the Division did not address several public interest factors and that Epic Capital disputed that Anthony committed the violations alleged in the Colorado action. *Id.* at *2. Thus, the Commission concluded that an evidentiary hearing before an administrative law judge was warranted to develop and resolve the disputed factual issues. *Id.* It ordered that a public hearing be convened for the purpose of taking evidence on the questions set forth in the OIP. *Id.*

The previously assigned judge held a four-day hearing in June 2025. The Division abandoned trying to prove the disputed facts related to the misconduct alleged in the Colorado action. *See* Div.'s Post-Hearing Br. at 40 (June 23, 2025) ("To be sure, the Division did not undertake to prove Anthony's past violations of the law in the Hearing."). Instead, the Division based its public interest analysis largely on different, uncharged matters involving Anthony. In August 2025, the judge issued an initial decision dismissing the proceeding. *Epic Capital*, 2025 WL 2388717. The judge concluded that: although the statutory predicate for finding that Epic Capital would be subject to suspension or revocation was satisfied by the injunction against Anthony in the Colorado action, the Division had failed to meet its burden of proof as to whether denial was in the public interest. *Id.* at *7–9. Because the alleged grounds for denying registration were unproven, the judge concluded that Epic Capital's application should be granted. *Id.* at *9.

The Commission granted the Division's petition for review and set an expedited briefing schedule. *Epic Capital*, Advisers Act Release No. 6910, 2025 WL 2462918 (Aug. 26, 2025). In a subsequent order, the Commission asked the parties for supplemental briefing on two issues that they had not previously addressed. Specifically, the Commission asked for briefing about whether, to grant Epic Capital's application, Section 203(c)(2)(B) requires the Commission to find: (1) the requirements of Section 203 are satisfied and (2) that Epic Capital is not prohibited from registering as an investment adviser under Section 203A—and whether there is a basis to make such findings. *Epic Capital*, Advisers Act Release No. 6920, 2025 WL 2674069 (Sept. 17, 2025).

After receiving the requested briefing from both parties,[3] the Commission issued an opinion remanding this matter and directing that further proceedings be conducted on those issues. *Epic Capital*, 2025 WL 3257930. The Commission made clear that the scope of the remand did not include the Division's public interest arguments, which the previously assigned judge had already addressed in her initial decision. *Id.* at *8.

On remand, I designated myself as the presiding judge due to the unavailability of the previously assigned judge and the Commission's expectation that this proceeding be concluded with alacrity. *Epic Capital*, Admin. Proc. Rulings Release No. 6952, 2025 SEC LEXIS 3008 (ALJ Nov. 25, 2025). I set a briefing schedule directing the parties to address the issues specified by the Commission. *Id.* I gave the parties the opportunity to supplement the record and to request another hearing, *id.*, but neither party did. The Division filed its brief, but Epic Capital did not submit its own brief or any response.

Standards

The analysis in this initial decision is based on the record and matters subject to official notice.[4] *See* 17 C.F.R. §§ 201.323, .350, .452. I have applied

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[3] In its supplemental brief, the Division candidly acknowledged that it "ha[d] not previously briefed or argued that Epic is not likely to raise [the $100 million] amount within 120 days of registration." Div. Brief in Response to Sept. 17, 2025, Supplemental Briefing Order, at 10 (Sept. 25, 2025). Rather, the Division asserted that it had argued before the previously assigned judge—as a "public interest concern"—that if Epic Capital was unable to raise that amount within 120 days of registration, it would face a regulatory gap where it would not be registered with any state and would not be eligible for Commission registration. *Id.* at 10–11. The Division then urged the Commission to deny Epic Capital's registration on the basis that it would not be eligible to register under Section 203A, as the record did not support a finding that it had a reasonable expectation of attracting the required amount of assets to manage within 120 days of registration. *Id.* at 11–18. Epic Capital disagreed and its counterarguments will be addressed below.

[4] The evidentiary record that forms the basis for this decision includes the transcript and admitted exhibits from the June 2025 hearing, as well as Exhibit A—an email from Anthony to Commission staff—which was accepted into evidence by the Commission. *See Epic Capital*, 2025 WL 3257930, at *4 & n.22; Div. Brief in Response to Sept. 17, 2025, Supplemental Briefing Order, with Exhibit A (Sept. 25, 2025) (Div. Ex. A).

preponderance of the evidence as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 97–104 (1981). The Commission's opinion remanding this case left the findings of fact in the prior initial decision undisturbed, and I adopt them as my own. In the analysis below, I have added factual details relevant to the issues the Commission has directed be addressed on remand. My analysis contains the factual findings and legal conclusions necessary for decision. All arguments and proposed findings and conclusions that are inconsistent with this decision are rejected.

This proceeding is subject to the procedural requirements of the Administrative Procedure Act (APA). *See* 5 U.S.C. § 554(a) (the APA "applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing," except in certain matters not relevant here); 15 U.S.C. § 80b-3(c)(2)(B) (proceedings conducted under Section 203(c)(2)(B) of the Advisers Act "shall include notice of the grounds for denial under consideration and opportunity for hearing"). Under the APA, the proponent of an order has the burden of proof, except as otherwise provided by statute. *See* 5 U.S.C. § 556(d); *see also id.* § 551(6) (defining "order" to mean "the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing"); *Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 276 (1994) ("[W]e understand the APA's unadorned reference to 'burden of proof' to refer to the burden of persuasion.").

As the Division seeks an order denying Epic Capital's application to register as an investment adviser, it normally would bear the burden of proof. The statutory framework, however, requires that certain criteria must be satisfied for the Commission to grant registration; otherwise, registration must be denied. *See* 15 U.S.C. § 80b-3(c)(2)(B); *Epic Capital*, 2025 WL 3257930, at *1, *5, *8.

Specifically, Epic Capital's application must provide the information and documents required by Section 203, *see* 15 U.S.C. § 80b-3(c)(1)(A)–(H), and Epic Capital must meet its asserted Rule 203A-2(c) exemption to overcome the statutory presumption that it is prohibited from registering with the Commission under Section 203A,[5] *see* 15 U.S.C. § 80b-3a; 17 C.F.R. § 275.203A-2(c). *See also FTC v. Morton Salt Co.*, 334 U.S. 37, 44–45 (1948)

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[5] An exemption under Rule 203A-2 "effectively grants [advisers] relief from the burdens of state registration." Leor Landa et al., Advising Private Funds: A Comprehensive Guide to Representing Hedge Funds, Private Equity Funds, and Their Advisers § 6:16 (2025).

("[T]he general rule of statutory construction that the burden of proving justification or exemption under a special exception to the prohibitions of a statute generally rests on one who claims its benefits."); *cf. SEC v. Ralston Purina Co.*, 346 U.S. 119, 126 (1953) (concluding that "imposition of the burden of proof on an issuer who would plead the exemption seems to us fair and reasonable" given "the broadly remedial purposes of federal securities legislation"). Thus, Epic Capital bears the burden as to whether it has met these two requirements.[6] If I find that the requirements of Section 203 have not been met, or I find that Epic Capital is prohibited from registering under Section 203A, I must deny Epic Capital's registration. *Epic Capital*, 2025 WL 3257930, at *1.

Analysis

Epic Capital's Form ADV Would Require Corrections to Satisfy Section 203

To register with the Commission, an investment adviser must apply using the Commission-prescribed Form ADV and make several required disclosures pursuant to Section 203 of the Advisers Act and regulations thereunder. *See* 15 U.S.C. § 80b-3(c); 17 C.F.R. §§ 275.203-1(a), 279.1. I will therefore address whether Epic Capital has provided the information and documents required by Section 203, which includes:

> (A) the name and form of organization under which the investment adviser engages or intends to engage in business; the name of the State or other sovereign power under which such investment adviser is organized; the location of his or its principal office, principal place of business, and branch offices, if any; the names and addresses of his or its partners, officers, directors, and persons performing similar functions or, if such an investment adviser be an individual, of such individual; and the number of his or its employees;
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> (B) the education, the business affiliations for the past ten years, and the present business affiliations of such investment adviser and of his or its partners, officers, directors, and persons

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[6] Conversely, to establish that Epic Capital's registration should be denied because it would be subject to suspension or revocation under Section 203(e), the Division would bear the burden. The Commission left undisturbed the prior initial decision's conclusion that the Division had failed to meet its burden to show that Epic Capital's registration should be denied on that basis.

> performing similar functions and of any controlling person thereof;
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> (C) the nature of the business of such investment adviser, including the manner of giving advice and rendering analyses or reports;
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> (D) a balance sheet certified by an independent public accountant and other financial statements (which shall, as the Commission specifies, be certified);
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> (E) the nature and scope of the authority of such investment adviser with respect to clients' funds and accounts;
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> (F) the basis or bases upon which such investment adviser is compensated;
>
> (G) whether such investment adviser, or any person associated with such investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such investment adviser under the provisions of subsection (e) of this section; and
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> (H) a statement as to whether the principal business of such investment adviser consists or is to consist of acting as investment adviser and a statement as to whether a substantial part of the business of such investment adviser, consists or is to consist of rendering investment supervisory services.

15 U.S.C. § 80b-3(c)(1)(A)–(H); *see also Epic Capital*, 2025 WL 3257930, at *1 ("The relevant requirements of Section 203 are in Section 203(c)(1), which specifies information and documents that the Commission may require an applicant to disclose in or include with an application for registration as an investment adviser."). The Commission has repeatedly "stated that Form ADV and its amendments embody 'a basic and vital part in our administration of the [Advisers] Act, and it is essential in the public interest that the information required by the application form be supplied completely and accurately.'" *Montford & Co.*, Advisers Act Release No. 3829, 2014 WL 1744130, at *16 & n.135 (May 2, 2014) (quoting *Justin Federman Stone*, Advisers Act Release No. 153, 1963 WL 63687, at *5 (Nov. 26, 1963)) (alteration in original), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015).

The Division of Enforcement argues, based on its consultation with the Division of Examinations, that several portions of Epic Capital's Form ADV must be updated or corrected should its application be granted. Div. Br.

Addressing Further Proceedings Remanded by the Commission, at 15–16 (Dec. 16, 2025) (Div. Remand Br.). However, the Division concedes that these issues are "correctable" and not grounds to deny the firm's registration. *Id.* at 2, 13, 16.

First, the Division correctly points out that because Epic Capital filed its Form ADV over a year ago, it must confirm its current accuracy by filing a Form ADV amendment. *Id.* at 15; *see* 17 C.F.R. § 275.204-1(a)(1)(i)–(ii).

Next, the Division details several inconsistencies in the information reported in Epic Capital's Form ADV concerning compensation agreements, which are relevant to Section 203(c)(1)(F); other business activities, which are relevant to Section 203(c)(1)(B) and (C); and disclosure events, which are relevant to Section 203(c)(1)(G). *See* Div. Remand Br. at 15–16. The Division also notes an issue about whether the client funds when custodied would be protected by Federal Deposit Insurance Corporation (FDIC) insurance, *see id.* at 16, as represented in Epic Capital's Part 2A brochure, Div. Ex. 34 at 19.[7]

Regarding compensation agreements, Epic Capital's Form ADV Item 5.E discloses that the adviser is compensated in part via "subscription fees (for a newsletter or periodical)" and solicitor fees. Div. Ex. 3 at 11. But Epic Capital's Form ADV Part 2A brochure is inconsistent with the disclosures in Item 5.E. For one, the brochure does not disclose a subscription fee. *See generally* Div. Ex. 34. Further, although the brochure acknowledges in a couple of places that the adviser "receives solicitor fees from [a] third party money manager," *id.* at 7; *see also id.* at 19, it elsewhere states unequivocally that "Epic Capital, LLC does not receive Solicitor Fees." *Id.* at 9. These inconsistencies would require correction.

As to other business activities, Epic Capital's Form ADV Item 6.A states that it is also engaged as an "insurance broker or agent" and as a tax planning firm under the name Optimal Tax, LLC. Div. Ex. 3 at 18. But its Part 2A brochure explains that the insurance agent and tax planning services are not provided directly by Epic Capital but by affiliated businesses owned by Anthony. Div. Ex. 34 at 4. Optimal Tax, LLC, according to the brochure, is not

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[7] "Part 2 of Form ADV contains disclosure requirements for [a] firm's brochure, which advisers must provide to prospective clients initially and to existing clients annually." *Montford*, 2014 WL 1744130, at *2 (internal quotation marks omitted). Registered investment advisers are required to provide clients with "a brochure and one or more brochure supplements … that contains all information required by Part 2 of Form ADV." 17 C.F.R. § 275.204-3(a).

another name for Epic Capital, but an affiliated business. *Id.*; *see also id.* at 16, 22. Therefore, Epic Capital's Form ADV Item 6.A is inaccurate. Moreover, Item 7.A and Section 7.A need to list the related persons and financial industry affiliations (including any areas in which conflicts of interest may occur) disclosed by the Part 2A brochure, such as Optimal Tax. *See* Div. Ex. 3 at 19.

Epic Capital last amended its Form ADV on October 25, 2024. Div. Ex. 3 at 1. Since then, this proceeding was instituted against it, and therefore, the Division argues that Item 11.G should be updated to reflect that the adviser is "the subject of [a] regulatory proceeding that could result in a 'yes' answer to any part of Item 11.C., 11.D., or 11.E." Div. Ex. 3 at 27. The Division does not specify which answers to the questions in Item 11.C., 11.D, or 11.E might change to "yes" due to this proceeding's outcome. However, at the very least, this proceeding could result in an order by the Commission against Epic Capital "in connection with investment-related activity." *Id.* at 26 (Item 11.C(4)). Thus, Item 11.G requires updating.

Epic Capital's Part 2A brochure provides that Epic Capital does not keep any client money itself, but custodies it with a third-party custodian "offering … FDIC insurance coverage." Div. Ex. 34 at 19. The brochure elsewhere states that custody of client funds would be offered by Goldman Sachs, Interactive Brokers, and Charles Schwab, *id.* at 4, but does not identify what FDIC-insured offerings of those institutions would protect the funds of Epic Capital clients.

Moreover, the Division correctly notes that the firm's website listed on its Form ADV, Div. Ex. 3 at 4, is not operational. Div. Remand Br. at 16; *see* https://www.epiccapitalwealth.com/ (last visited Feb. 11, 2026) (displaying a privacy error preventing access to the site). Although it is possible that Anthony planned on activating the website once the Commission granted Epic Capital's registration, Tr. 344–46, 354, 381–82, this issue needs to be clarified.

Finally, Anthony would also have to correct his claim in Epic Capital's Part 2A brochure that his certified financial planner and retirement management analyst designations are "currently renewing as of 9/23/2024." Div. Ex. 34 at 22. This wording is misleading because it makes it seem like the renewals are a foregone conclusion when, in fact, the relevant authorities may not renew his designations due to the suspension imposed against him in the Colorado action. *See Epic Capital*, 2025 WL 2388717, at *6; Tr. 559–68. Anthony admitted at the hearing that the designations are no longer in renewal and thus the "currently renewing" language in the brochure would need to be corrected. Tr. 568–69.

Were I to grant Epic Capital's application, these items would need to be clarified or corrected. However, it is pointless to order correction, because Epic Capital is prohibited from registering under Section 203A as it lacks a reasonable expectation of reaching $100 million in assets under management within 120 days of registration.

Epic Capital Is Prohibited from Registering Under Section 203A

Under Section 203(c)(2) of the Advisers Act, the Commission shall deny an applicant's registration if it is prohibited from registering as an investment adviser under Section 203A. 15 U.S.C. § 80b-3(c)(2). Section 203A and its attendant regulations provide that to be registered with the Commission, an investment adviser must have $100 million in assets under management or advise certain clients specified by the Advisers Act. *See* 15 U.S.C. § 80b-3a(a)(2)(A)&(B); 17 C.F.R. § 275.203A-1(a); *Epic Capital*, 2025 WL 3257930, at *2. Epic Capital does not currently have any clients or any assets under management. Tr. 382; Div. Ex. 34 at 8. Therefore, it is presumptively prohibited from registering.

Epic Capital asserts an exemption from this prohibition under Rule 203A-2(c) for an adviser that "has a reasonable expectation that it would be eligible to register with the Commission within 120 days after the date the investment adviser's registration with the Commission becomes effective."[8] 17 C.F.R. § 275.203A-2(c). As the phrase "reasonable expectation" is not defined by statute or rule in this context,[9] the words should be understood according to their ordinary or common meaning, including dictionary definitions. *See Smith v. United States*, 508 U.S. 223, 228 (1993); *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 472 (1977). As the Commission explained, "[t]he common definition of 'expect' is to consider 'probable' or 'likely to happen.'" *Epic Capital*, 2025 WL 3257930, at *6 & n.33 (citing dictionary definitions).

Therefore, to determine whether Epic Capital qualifies for registration under the Rule 203A-2(c) exemption, the relevant inquiry is "whether it is reasonable to conclude that it is more likely than not that Epic Capital will

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[8] This exemption is unavailable to an adviser that is registered or required to be registered with the Commission or any state. *See* 17 C.F.R. § 275.203A-2(c).

[9] In a different context, the Supreme Court has observed that reasonable expectation means something more than "a mere . . . theoretical possibility." *Murphy v. Hunt*, 455 U.S. 478, 482 (1982) (discussing the meaning of "reasonable expectation" in the context of the capable-of-repetition-yet-evading-review exception to Article III mootness).

reach at least $100 million in [assets under management] within 120 days of its registration becoming effective." *Id.* at *6. This inquiry is necessarily fact specific and, in this case, turns on:

(1) Whether Anthony has previous clients with substantial assets from other advisory entities who have indicated that they will transfer their assets to his new firm, Epic Capital. *Id.* at *5–6; *see also* Rules Implementing Amendments to the Investment Advisers Act of 1940, 62 Fed. Reg. 28,112, 28,118 n.68 (May 22, 1997).

(2) "Anthony's likelihood of attracting new substantial assets to Epic Capital for management," considering factors such as: (a) the amount of money previously managed by Anthony, and how close it was to the regulatory threshold of $100 million; (b) whether Anthony has identified persons who collectively could reasonably be expected to entrust sufficient assets to Epic Capital or has a concrete plan for attracting new clients and the reasonableness of that plan; (c) Anthony's regulatory history and the degree to which it will impact his ability to attract clients to Epic Capital; and (d) Anthony's track record of returns for clients. *Epic Capital*, 2025 WL 3257930, at *6–7.

Anthony does not intend to transfer any clients to Epic Capital.

When adopting the 120-day exemption, the Commission explained that one example where there would be a reasonable expectation of meeting the exemption's requirements—and indeed, the way it anticipated that the exemption would be used primarily—was by "persons who start their own advisory firms after having been employed by or affiliated with other advisers, and that have received an indication from clients with substantial assets that they will transfer those assets to the management of the newly formed adviser." 62 Fed. Reg. at 28,118 n.68; *cf.* Exemption for Certain Investment Advisers Operating Through the Internet (Proposed Rules), 67 Fed. Reg. 19,500, 19,501 n.15 (Apr. 19, 2002) ("[The 120-day exemption] was designed for use principally by new advisory firms that have been 'spun-off' from existing portfolio management firms . . . ."). Here, however, Anthony testified that he did not plan to take or transfer any of Anthony Capital's clients with him to Epic Capital. Tr. 384. Moreover, nothing in the record shows that Anthony has any other client base with significant assets who have indicated that they will transfer their assets to Epic Capital. This puts Epic Capital at a disadvantage, as Anthony will need to build the business from the ground up.

Anthony is not likely to attract new substantial assets to Epic Capital for management.

Transferring client assets to a new firm is not the only way to qualify for the exemption. The Commission has recognized that "[o]ther circumstances . . . also could support an adviser's reasonable expectation of becoming eligible." 62 Fed. Reg. at 28,118 n.68; *see also Epic Capital*, 2025 WL 3257930, at *5 n.31. Here, consideration of the totality of circumstances shows that Anthony is not likely to attract new substantial assets to Epic Capital for management.

Anthony has never previously managed sufficient assets to qualify for Commission registration and is now more limited in his choice of offerings.

A substantial factor as to whether an applicant has a reasonable expectation of meeting the 120-day exemption is the amount of assets it or its affiliates have previously managed. *See David Henry Disraeli*, Exchange Act Release No. 57027, 2007 WL 4481515, at *12 (Dec. 21, 2007) (finding that an adviser lacked a reasonable expectation of reaching the regulatory threshold when its principal had previously managed less than half the required amount at any point in his career), *aff'd*, 334 F. App'x 334 (D.C. Cir. 2009). Anthony managed well less than half the required $100 million—only between $20 and $30 million—with Anthony Capital. Tr. 40.

However, Anthony also created several private placement offerings under Regulation D, which attracted almost $50 million in investment. Anthony Capital Alternative Investments Income Funds 1–5—which invested in life settlements—raised more than $40 million from investors between 2018 and 2021. Tr. 88–89, 138–40, 143–44; Receiver's First Semi-Annual and Initial Plan Distribution Report, at 6, *Tung Chan v. Anthony*, No. 22-cv-30574 (July 31, 2025).[10] Anthony Capital Funding, LLC, which was formed in 2018 and provided merchant cash advance investments to small- and medium-sized businesses, raised $2.3 million. Tr. 164–65; Resp't Ex. 3 at PDF 55; Div. Ex. 23 at 51–52. And Anthony Capital Bond Fund 1, LLC, invested more than $5 million in a Florida-based fund, Harbor City Capital, from August 2020 until March 2021. Tr. 152–55, 188, 198. All told, Anthony may have managed around $80 million at the peak of his career, which puts him much closer to the regulatory threshold. Still, $80 million is not $100 million. Further, Anthony

[10] I take official notice of the receiver's report, which is a state-court record. *See* 17 C.F.R. § 201.323; *Keith Patrick Sequeira*, Exchange Act Release No. 85231, 2019 WL 995508, at *1 n.2 (Mar. 1, 2019), *pet. denied*, 816 F. App'x 703 (3d Cir. 2020). The report and other relevant documents are publicly available here: https://www.anthonycapitalreceivership.com/case-updates.

would have only 120 days to raise that amount from new clients. *Cf.* Tr. 382 (Anthony testified that he "had raised close to $50 million in under six months").

Significantly, Anthony testified that he did not intend for Epic Capital to set up private placement offerings—rather, it would focus on more traditional investments. Tr. 385; *see generally* Div. Ex. 34 (Epic Capital's Part 2A brochure discusses only traditional investment opportunities). This may be because—as Anthony admitted in a motion he filed in January 2023 to set aside the Colorado settlement—he is no longer permitted to form and raise funds under Rule 506 of Regulation D due to the injunction in the Colorado action. Div. Ex. 14 at 8. Rule 506 of Regulation D, which provides exemptions from Commission registration for certain private securities offerings, contains a "bad actor disqualification" that prohibits its use by persons, like Anthony, who have been enjoined by "any court of competent jurisdiction" from "engaging or continuing to engage in any conduct or practice: . . . [i]n connection with the purchase or sale of any security." 17 C.F.R. § 230.506(d)(1)(ii)(A).[11] Previously, the bulk of Anthony's assets under management came from Rule 506 offerings. The fact that he is now prohibited from utilizing Regulation D's exemptions is a further barrier to Epic Capital being able to reach the regulatory threshold within 120 days.

Anthony has not identified new potential clients with substantial assets, and he lacks a concrete plan to attract new clients to Epic Capital.

Epic Capital "is not actively seeking clients," since it is not yet registered. Tr. 408. And when Anthony has been provided with the opportunity to explain how he would raise $100 million within 120 days of Epic Capital's registration, he has consistently failed to produce a concrete, workable plan.

In October 2024, Anthony responded to questions from the Division of Examinations about Epic Capital's reasonable expectation of meeting the 120-day exemption's requirements by stating that he had "over $200m in cumulative assets from interested individuals that have approached [him] about a potential advisory relationship from 10 plus states." Div. Ex. A at 1. When subpoenaed in this proceeding for more information about these individuals, Anthony first provided a list of what he described as more than 3,200 "high income earning, accredited investors." Div. Ex. 41 at 1. However, he subsequently explained that "Epic Capital is not actively soliciting clients," and that the individuals on the list had merely "expressed an interest in

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[11] Anthony would also be prohibited from using Regulation D because he "[i]s subject to a final order of a state securities commission" barring him from "[e]ngaging in the business of securities." 17 C.F.R. § 230.506(d)(1)(iii)(A)(2).

additional information." Div. Ex. 42 at PDF 1. Specifically, Anthony testified at the hearing that "[t]hese people have responded to advertisements about tax planning on social media" and "have opted in to a sales funnel that they want to get more information about how they can reduce their tax liability. And they've provided their phone number, their contact email, and they want someone to reach out to them to discuss how they can save money on taxes." Tr. 406–07. However, as far as Anthony knew, they had never heard of Epic Capital. Tr. 408. Indeed, the notes appended to the investor list concern the tax liability of the listed individuals and their level of interest in tax planning strategies, Div. Ex. 42 at PDF 152–66, but do not suggest that these individuals have agreed—even tentatively—to enter into an advisory relationship with Anthony or Epic Capital.

In response to the Commission's September 2025 order requesting supplemental briefing, Anthony relied heavily on the tax-planning list. He wrote: "Anthony has thousands of affluent potential clients that have indicated an interest in working with a professional who can help them save money and reduce their tax liability." Respondent Response to 9/17/25 Supplemental Briefing Order, at PDF 3 (Sept. 22, 2025) (Resp't Supp'l Br.). In a follow-up brief, Anthony added "that since 10/2024 and today … I have had conversations with individuals with tens of millions of dollars who have expressed an interest in asset management via my presenting to them various tax planning options." Respondent Response to 9/25/25 and 9/30/25 Div. Briefing, at 5 (Sept. 30, 2025) (Resp't Response to Div. Briefing). *See also id.* at 6 (Anthony "has a network of high net worth, accredited individuals that well exceed the $100m [assets under management] threshold that he could offer investment management services to."). But possession of a list of individuals interested in tax planning—or even recent conversations with people about tax planning who might also be interested in asset management—is not a workable plan for reaching $100 million in assets under management within 120 days.

Anthony also suggested another strategy. He wrote that the individual retirement account "marketplace is valued at $18 trillion," achieving $100 million in assets under management "is as easy as 50 individuals with $2m each," and that he "lives right next to Park City, Utah—the second-most wealthy micropolitan area in the nation." Resp't Supp'l Br. at PDF 3. But Anthony did not explain how he intends to raise $2 million apiece from 50 people, nor how his mere proximity to a wealthy area translates into a plan for attracting clients who would commit substantial assets to Epic Capital. Further, Anthony has not provided evidence that any Park City residents have committed to entrusting him with capital or entering an advisory relationship with him. So, this strategy is nothing more than aspirational. And, as will be

discussed in the next section, Anthony may face substantial hurdles to raising funds in Utah.

Anthony also argued that "he has access to significant potential [assets under management] clients via his advanced tax planning and Roth IRA conversion strategies that have been viewed and watched tens of thousands of times on Youtube." *Id.* It is true that Anthony's YouTube videos on retirement planning attracted clients to Anthony Capital. Tr. 655–56 (an investor testified that he discovered Anthony through his videos). Nevertheless, the popularity of Anthony's videos is, without more, insufficient to provide him with a reasonable expectation that viewers will commit $100 million to Epic Capital to manage within 120 days of registration. It also bears mention that one of Anthony's most effective marketing platforms, a radio show called the "Retirement Income Show with Dave Anthony"—which brought some clients to Anthony Capital—ceased broadcasting after his legal issues in Colorado. Tr. 32–34, 42, 634.

Anthony further argued that he expects to reach $100 million "with the advances in technology that allow advisors to streamline and scale their competitive advantages." Resp't Supp'l Br. at PDF 3. But Anthony has never explained what these technological advances are, how they would be used as part of any plan to attract clients, or how they would help him reach the regulatory threshold within 120 days.

Finally, Anthony did not submit additional briefing or evidence in response to my November 25, 2025, order that could have clarified the aspects of his plan that he mentioned in response to the Commission's supplemental briefing order.

> *Anthony's regulatory history makes it less likely that he could attract clients to entrust their assets to Epic Capital.*

In addition to the above circumstances, Anthony's regulatory history casts doubt on his ability to attract clients with substantial assets within 120 days. It is well-established that a professional's experience and regulatory history would affect a reasonable investor's decision whether to entrust their money to that professional or an entity under his control.[12]

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[12] *See, e.g.*, *SEC v. Conrad*, 354 F. Supp. 3d 1330, 1345 (N.D. Ga. 2019) ("[A] General Partner's wealth management experience and serious discipline from the regulating body cannot be reasonably characterized as 'essentially useless' information that a reasonable investor would not consider significant. . . . There is a substantial likelihood that a reasonable investor would attach

(continued…)

In March 2022, the Colorado Securities Commissioner filed a six-count complaint against Anthony and his entities, which included allegations of securities fraud and investment adviser fraud and failing to comply with licensing and registration requirements. Div. Ex. 5. Anthony settled the matter, "neither admitting nor denying the allegations"; was enjoined from the securities industry in Colorado; and had his Colorado investment adviser license suspended. Div. Exs. 4, 12, 21. Moreover, the assets of the entities under his control were placed in receivership. Div. Ex. 9. Anthony is forbidden from selling securities or advising any clients in Colorado until 2033, even through an agent or employee, Div. Ex. 4 at 1, which means that he is foreclosed from seeking clients for Epic Capital in Colorado, his former base of operations.

The adverse regulatory actions against Anthony are publicly available information, and as required, he disclosed them on Epic Capital's Form ADV. Div. Ex. 3 at 33–39; Div. Ex. 34 at 13–15, 23. Anthony has argued in the Form ADV and throughout this proceeding that he is innocent of the allegations against him. *See, e.g.*, Div. Ex. 3 at 38–39; Div. Ex. 34 at 14–15; Resp't Response to Div. Briefing at 5. Nevertheless, the seriousness of the charges and the fact of the injunction and suspension make it less likely that Anthony could attract potential new clients even outside of Colorado, creating a substantial hurdle to reach $100 million within 120 days.

Also, the previous administrative law judge found—correctly—that Anthony repeatedly flouted the receivership order by continuing to take several actions in relation to his former entities and their assets (which were part of the receivership estate) and by interacting with investors after he was forbidden from doing so. *See* Div. Ex. 9 at 13–14; Tr. 250–65; Div. Ex. 48C at 13–14, 17; *Epic Capital*, 2025 WL 2388717, at *4. His disregard for the court-

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importance [to such information.]"); *SEC v. Levine*, 671 F. Supp. 2d. 14, 27–28 (D.D.C. 2009) ("[A] reasonable investor would want to know whether the person they are sending their money to in order to purchase stock has been previously found to have violated the securities laws."); *SEC v. Kirkland*, 521 F. Supp. 2d 1281, 1287, 1303 (M.D. Fla. 2007) ("Desist and Refrain Orders issued against [defendant] by the state of California . . . [were] material because those orders found that [defendant]'s investment opportunities and his conduct in offering them for sale violated California securities laws"); *SEC v. Paro*, 468 F. Supp. 635, 646 (N.D.N.Y. 1979) ("[I]nvestors would have been especially dubious of the [new investment] venture if they had been apprised of the cease and desist orders and injunctions which had been issued against [its principal] and [the entity]'s predecessor by the state and federal courts.").

ordered receivership process could make potential new clients hesitant to trust him.

Moreover, Anthony's trouble registering Anthony Capital in Utah indicates that he may face a significant roadblock in his plan to rapidly recruit wealthy clients from Park City, Utah. *See* Resp't Supp'l Br. at PDF 3. In December 2023, Anthony attempted to register a newly formed entity named Anthony Capital LLC as an investment adviser in the state of Utah, but Utah regulators told Anthony that they intended to file an administrative action to deny his application, in part because of his suspension in Colorado. Div. Ex. 25; Div. Ex. 36 at 2. Relevant here, they also told Anthony that if he intended to register himself as an investment adviser representative (IAR) in Utah, the application "is similarly reviewed as it was for the state-covered adviser firm and may result in a denial." Div. Ex. 37 at 2.

Under federal regulation, an IAR is a "supervised person of [an] investment adviser" who provides personalized investment advice to more than five clients who are natural persons and more than ten percent of whose clients are natural persons. 17 C.F.R. § 275.203A-3(a). IARs are licensed by the state in which the adviser does business. *See* 15 U.S.C. § 80b-3a(b)(1)(A) ("a State may license, register, or otherwise qualify any investment adviser representative who has a place of business located within that State," even if the adviser itself is subject to Commission registration). If Epic Capital intends to advise more than five clients in Utah, it typically would need to register an IAR there and follow other licensing procedures, unless it establishes an exemption. *See* Utah Code Ann. § 61-1-3(3)(b)&(c)(iii), (6); *see also* Utah Code Ann. § 61-1-13(1)(r) (state definition of IAR); *see generally* Utah Div. of Securities, "Investment Adviser: Federal vs State Regulation," https://securities.utah.gov/licenses/investment-adviser/ ("[F]ederal covered advisers must still license [with the state of Utah] any IA Rep with a place of business in Utah"). In Utah, it is unlawful for a federal covered adviser to employ, supervise, or associate with an IAR having a place of business located in Utah, unless the IAR is licensed in Utah or exempt from licensing. Utah Code Ann. § 61-1-3(5)(a)(ii). It is also unlawful for any adviser in Utah to employ or associate with an individual to engage in an activity related to providing investment advice in Utah if that person is subject to a suspension, revocation, or bar by a regulatory body, including a securities administrator of a state other than Utah. *Id.* § 61-1-3(5)(a)(iii)(B). If Anthony—who is Epic Capital's only employee—cannot register as an IAR in Utah, this effectively means that the firm as currently structured may be unable to operate in Utah, thus undermining his plan to attract clients from Park City.

Anthony's solution to this problem, as he explained at the hearing, would be to have Epic Capital hire a different IAR to manage client funds, while he

would remain the "rainmaker and the face" of the firm. Tr. 577–78, 582–83, 605–07. But, as the Division points out, recruiting, training, and registering even one new IAR is a significant undertaking that will cut into the already brief 120-day period to attract $100 million. Div. Remand Br. at 29. Moreover, the definition of an IAR in Utah is rather broad and includes any non-clerical personnel associated with an adviser who, among other activities, are engaged in soliciting for the sale of investment advisory services. Utah Code Ann. § 61-1-13(1)(r). It is therefore unclear how Anthony can be the "rainmaker and the face" of the firm without himself being lawfully licensed.

A further complication related to Anthony's inability to register Epic Capital in Colorado or Utah (and possibly other states)[13] is the prospect that Epic Capital will fail to raise $100 million within 120 days and be forced to withdraw its Commission registration. Since Anthony may find it difficult to register Epic Capital with any state, the company would remain in limbo with funds committed by clients but no way to legally operate and manage the money. The Division argues that the wealthy, sophisticated clients Anthony is targeting are likely to realize this problem and be hesitant to entrust their funds in the first place. Div. Remand Br. at 35. Anthony argued in his brief before the Commission that in such a circumstance, he could "pivot to a state registered advisor and maintain the eligibility requirements by hiring other individuals as [IARs] and transferring ownership and control of the company to other [third] parties," such as "family members and business associates." Resp't Supp'l Br. at PDF 4. But this "pivot" would entail the wholesale reorganization of Epic Capital, and Anthony would likely remain a "person associated with" Epic Capital regardless. *See* 15 U.S.C. § 80b-2(a)(17). I agree with the Division that the possibility of Anthony failing to reach the regulatory threshold within 120 days to maintain Commission registration and subsequently failing to obtain state registration is a significant concern that likely would deter clients in the first instance.

Anthony has also argued that his certified financial planner, retirement management analyst, and certified financial manager designations help provide him with a reasonable expectation of attracting $100 million within 120 days. Resp't Supp'l Br. at PDF 3. But, as he testified at the hearing, he no

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[13] At the hearing, Anthony testified that he also had to withdraw his application to be an investment adviser or IAR in California, "probably because" of what "was going on in Colorado." Tr. 403–04. *But see* Respondent's Response to Div.'s Petition for Review of the Initial Decision and Div.'s Brief in Support, at PDF 23 (Aug. 30, 2025) (claiming that Anthony applied to be an IAR in California before the Colorado action and that he received no denial letter from California).

longer holds a certified financial planner or retirement management analyst certification. Tr. 559, 568. He was unable to renew either certification because of the Colorado action. *See* Tr. 559–68.

Anthony's track record of returns makes it less likely that he could attract new clients.

In his brief before the Commission, Anthony argued that his "25+ year career in the financial services industry," his successful operation of Anthony Capital, and his raising millions of dollars through Regulation D provide him with a reasonable expectation of being able to raise $100 million within 120 days. Resp't Supp'l Br. at PDF 2–3. What Anthony does not mention, however, is that he also lost his clients a good deal of money.

The investors in Anthony Capital Funding and Anthony Capital Bond Fund—who invested more than $7 million in total—lost nearly all their money because the investments that Anthony chose turned out to be Ponzi schemes. *See* Tr. 166–71, 175–77; 197–201; SEC Obtains Emergency Relief, Charges Florida Company and CEO with Misappropriating Investor Money and Operating a Ponzi Scheme, Litigation Release No. 25082, https://www.sec.gov/enforcement-litigation/litigation-releases/lr-25082 (Apr. 27, 2021). The investors in Anthony's life settlement funds did not do well either. Two married investors whom Anthony called at the hearing testified that they had invested $4 million in one of these funds and were told by the receiver that they could expect to get back only $540,000.[14] Tr. 639. The fact that many of Anthony's previous clients lost money is also publicly available information that will likely deter potential new clients from Epic Capital.

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In sum, Epic Capital has no current clients and no assets under management. Anthony has no previous clients with substantial assets who will be transferred to the new firm. Moreover, he is not likely to attract new substantial assets to Epic Capital for management: he never managed an amount close to the regulatory threshold of $100 million and now has a more limited means of attracting potential new clients; he has not identified any potential new clients with substantial assets; and he has no concrete plan for attracting new clients. Further, Anthony's regulatory history and track record of returns makes it less likely that he could attract new clients. Therefore, Epic Capital lacks a reasonable expectation of reaching $100 million in assets under

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[14] Anthony has repeatedly argued that these losses are the receiver's fault. *See, e.g.*, Tr. 639–40. Even if true, they are still significant losses that call into question his investment judgments and business acumen.

management within 120 days of registration. It may continue to seek state registration, but it is prohibited from registering with the Commission under Section 203A and does not qualify for the Rule 203A-2(c) exemption.

Record Certification

I certify that the record includes the items set forth in the amended record index issued by the Secretary of the Commission on January 9, 2026. *See* 17 C.F.R. § 201.351(b).

Order

The application of Epic Capital Wealth Advisors, LLC, to register as an investment adviser is DENIED, pursuant to Section 203(c)(2)(B) of the Investment Advisers Act of 1940.

This initial decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Given the expedited nature of this proceeding, a party may file a petition for review of this initial decision by no later than February 18, 2026, and no motion to correct a manifest error of fact will be considered. The initial decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or the Commission determines on its own initiative to review the initial decision as to a party. If any of these events occur, the initial decision will not become final as to that party.

/s/ Dean C. Metry
Chief Administrative Law Judge