UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19576

In the Matter of

PORTFOLIO ADVISORS ALLIANCE, INC.,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT PORTFOLIO ADVISORS ALLIANCE, INC. AND MEMORANDUM OF LAW IN SUPPORT

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Pursuant to Rule 250(b) of the Securities and Exchange Commission's ("SEC" or "Commission") Rules of Practice, the Division of Enforcement ("Division") respectfully moves for summary disposition against Respondent Portfolio Advisors Alliance, Inc. ("PAA"). This proceeding is a follow-on proceeding arising from a civil securities antifraud injunction imposed against PAA, a registered broker-dealer, after a jury trial and full briefing on remedies, by the United States District Court for the Southern District of New York. Because PAA has been enjoined and the sole determination concerns the appropriate sanction against it under Section 15(b)(4)(C) of the Securities Exchange Act of 1934 (the "Exchange Act"), this motion for summary disposition should be granted, and the registration of PAA as a broker-dealer should be revoked.

I. Procedural History and Factual Background

PAA was (and is) a registered broker-dealer in New York, New York, and acted as the selling agent for a private placement offering of American Growth Funding II, LLC ("AGF II") securities from at least March 2011 to December 2013. Order Instituting Administrative

Proceedings ("OIP"), File No. 3-19576, Section II, at ¶¶ 1, 3. PAA was indirectly owned by Howard J. Allen III ("Allen"), who also sold AGF II securities to investors. *Id.*

In February 2016, the Commission charged, among others, PAA, Allen, and Kerri L. Wasserman ("Wasserman"), PAA's President/Chief Compliance Officer, with securities fraud for raising approximately $8.6 million from at least 85 investors through material misrepresentations and omissions in connection with AGF II's offering.[1] *See* Complaint in *SEC v. American Growth Funding II, LLC*, No. 16-cv-828 (KMW) (S.D.N.Y.) (the "Civil Action"). *See generally* Division Ex. 1 (Civil Action's Docket Sheet)[2] and Division Ex. 2 (Complaint, DE # 6).[3] In addition, Allen and Wasserman, as PAA's principals, were charged as controlling persons for violations of PAA under the antifraud provisions of the securities laws (Sections 17(a)(1), (2) and (3) of the Securities Act of 1933 ("Securities Act") and Sections 10(b) of the Exchange Act and Rule 10b-5(a), (b) and (c) thereunder). Division Ex. 2 at ¶¶ 8, 99-101.

The gravamen of the Complaint against PAA is that from at least March 2011 to December 2013, PAA, through its owner Allen, sold AGF II securities in a private placement offering using offering documents (private placement memoranda or "PPMs") that falsely stated that AGF II's financial statements had previously been audited and would continue to be audited at the end of each fiscal year. OIP, Section II, at ¶ 3 (summarizing the Complaint's allegations against PAA).

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1 AGF II and Ralph C. Johnson ("Johnson"), Chief Executive Officer of AGF II, were also charged, but they settled prior to trial. *See* Division Ex. 1 (docket sheet), DE # 6, 203, 205-206.

2 All Division exhibits are appended to the Declaration of Richard Hong, filed concurrently herewith.

3 Under Rule 323, a hearing officer may take notice of "any material fact which might be judicially noticed by a district court of the United States..." 17 C.F.R. § 201.323. Thus, official notice may be taken of the Commission's public official records and of the docket reports, court orders, official trial transcripts, admitted trial exhibits, and other court filings by the parties in the Civil Action.

In addition, PAA, through Allen, learned by at least May or June 2012 that the PPMs were false, but continued to provide the false documents to investors for more than a year thereafter to solicit sales of AGF II securities, without disclosing to any investors that no audits had been performed or that the representation in the PPMs regarding an audit was false. *Id.*

On April 30, 2019, a jury trial commenced against PAA, Allen, and Wasserman in the Southern District of New York.[4] Division Ex. 1 (Docket Sheet) at DE # 255 (minute entry). The SEC called witnesses, including Allen, Wasserman, and Johnson of AGF II, and introduced 74 exhibits in its case-in-chief (including stipulations and deposition testimony of AGF II investor John McGowan). *See generally* Division Ex. 3 (Trial Transcript or "Trial Tr.") at 70-92 (Robert Spiegel), at 128-156 (Peter Pak), at 159-202 (Lawrence Sucharow), at 214-234 (Stuart Bender), at 261-302 (Johnson), at 303-366 (Wasserman), at 367-416, 426-452 (Allen), at 452-473, 477-480 (Thomas Feretic), at 480-528 (SEC expert Robert Lowry), and 539-577 (SEC expert Harris Devor) and Division Ex. 4 (containing all SEC Trial Exhibits) (all transcripts and exhibits attached hereto as Division exhibits).

For its defense case, PAA called witnesses, including attorneys Andrew Russell and Timothy Kahler, as well as Johnson, Allen, and Wasserman, and introduced 43 exhibits (including stipulations and deposition testimony of defense expert Richard Chase). Division Ex. 3 (Trial Tr.) at 579-594, 655-691 (Johnson), at 697-727 (Kahler), at 740-758, 1011-1024 (Jennie Pell), at 759-783 (Wasserman), at 785-792, 821-863, 873-893, 1024-1041 (Allen), at 894-903 (Seymour Weinberg), at 981-1011(Russell). In addition, the District Court (Judge Kimba M. Wood) allowed, outside the presence of the jury, additional *voir dire* examination of a witness (Russell) to determine the admissibility of his testimony. Division Ex. 3 (Trial Tr.) at 624-649.

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[4] PAA, Allen and Wasserman were (and are) jointly represented by the same counsel.

On May 15, 2019, the jury returned verdicts against PAA, Allen, and Wasserman, finding them liable for all violations against them. Division Ex. 1 (Docket Sheet) at DE # 279 (entry of the jury verdicts) (minute entry); Division Ex. 3 (Trial Tr.) at 1231-35 (reading of the jury verdicts).

After full briefing by the parties, the District Court, which presided over the trial, issued an Opinion & Order on remedies on September 24, 2019. Division Ex. 5 (Opinion & Order) (DE # 313). With respect to PAA, the Court granted a permanent injunction, enjoining PAA from future violations of the antifraud provisions of the securities laws; awarding disgorgement in the amounts of $860,000, plus $199,721.28 in prejudgment interest, from PAA and Allen, jointly and severally; and imposing a $200,000 civil penalty against PAA. *Id.* at 9.

The District Court made several findings in its Opinion & Order. As to the issuance of a permanent injunction, the Court held that:

> [A] permanent injunction is warranted. The jury found Defendants [PAA, Allen and Wasserman] liable for violations of the antifraud provisions of the securities laws, which required a finding that Defendants acted with *scienter*. The violations continued over a period of years, and were not simply an isolated occurrence of bad judgment. As Defendants' opposition to the requested relief demonstrates, they continue to dispute their blame for the illegal conduct. Because Allen and Wasserman are registered broker-dealers at PAA, which has continued to operate in the securities industry, Defendants are in a position where future violations could be anticipated. Finally, the injunction is not onerous because it merely requires Defendants not to break the law.

Division Ex. 5 (Opinion & Order) at 2 (citation omitted).

Next, with respect to disgorgement, the District Court found that PAA and Allen should be jointly and severally liable for disgorgement of ill-gotten gains because "Allen failed to establish a 'good faith' defense, plainly 'collaborated' in PAA's unlawful conduct, and profited from that collaboration." *Id.* at 6. In addition, the Court noted, "Allen owned PAA, and sold the majority of all AFG [*sic*] II investments." *Id.*

Finally, as to civil penalties, the District Court explained that the following penalty factors – the egregiousness of the defendants' conduct; the degree of the defendants' *scienter*; and the recurrence of the defendants' conduct – "weigh in favor of imposing significant penalties." *Id.* at 7. And, while ultimately imposing smaller penalties, the Court found that the actions of PAA and co-defendants Allen and Wasserman had met the standard for imposing "Third Tier" penalties for violations involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement that also directly or indirectly resulted in substantial losses or created a significant risk of substantial losses. *Id.* Accordingly, the Court entered a Final Judgment, including a permanent injunction, against Allen and PAA on October 1, 2019. Division Ex. 6 (Final Judgment as to Allen and PAA) (DE # 319).[5]

On October 7, 2019, the Commission initiated this follow-on OIP pursuant to Section 15(b) of the Exchange Act against PAA.[6] File No. 3-19576. On October 25, 2019, PAA served its Answer to the OIP ("Answer"). Notably, in its Answer, PAA (1) did not deny that it has been enjoined from future violations of the antifraud provisions of the securities laws and (2) admitted that "[a]t all relevant times, [PAA] was a registered broker-dealer." Answer at 1-2.

Pursuant to Rule 230(d) of the Commission Rules of Practice, the parties conferred and agreed that discovery in this proceeding is the record in the Civil Action. Division Ex. 7 (November 18, 2019 email exchange between counsel for the Division and PAA regarding

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[5] PAA claims that it will appeal to the Second Circuit. Answer at 3 n.5. To date, however, it does not appear that PAA has done so.

[6] On the same day, the Commission also initiated two other related proceedings pursuant to Section 15(b) of the Exchange Act against Allen and Wasserman. *See* File Nos. 3-19577, 3-19578.

discovery after an earlier prehearing conference). As such, the parties agreed that discovery has been made available to each other for inspection and copying in this proceeding. *Id.*[7]

II. The 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 to the respondent for inspection and copying, a party may move for summary disposition of any or all allegations of the OIP. 17 C.F.R. § 201.250(b). A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. *Id.*

The Commission has repeatedly upheld the use of summary disposition in cases such as this, where the respondent has been enjoined and the sole determination concerns the appropriate sanction. *See, e.g., Gary M. Kornman*, Exchange Act Rel. No. 59403, 2009 WL 367635, at *10 & n. 58 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010) (collecting cases). Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "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, *petition for review denied*, 66 F. App'x 687 (9th Cir. 2003)).

Further, "[f]ollow-on proceedings are not an appropriate forum to revisit the factual basis for, or legal challenges to, an order issued by a federal court, and challenges to such orders do not present genuine issues of material fact in our follow-on proceedings." *John W. Lawton*,

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[7] According to the OIP, this proceeding against PAA is deemed to be under the 75-day timeframe specified in Rule of Practice 360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i). OIP, Section IV, at unmarked page 3.

Investment Adviser Act Rel. No. 3513, 2012 WL 6208750, at *5 (Dec. 13, 2012). Thus, the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent, including a proceeding in which an injunction was entered after trial. *See James E. Franklin*, Exchange Act Rel. No. 56649, 2007 WL 2974200, at *4 (Oct. 12, 2007). Finally, any pending appeal of an underlying judgment does not prevent the Commission from exercising its jurisdiction in a follow-on administrative proceeding. *James E. Franklin*, 2007 WL 2974200, at *4 n.15.

III. Summary Disposition Is Proper in This Follow-on Proceeding

Section 15(b)(4) of the Exchange Act authorizes revocation of a broker-dealer registration of an entity if: (1) at the time of the alleged misconduct, the entity was registered as a broker or dealer; (2) the entity has been enjoined from any action, conduct, or practice specified in Exchange Act Section 15(b)(4)(C); and (3) the sanction against the entity is in the public interest. *See* 15 U.S.C. § 78o(b)(4)(C).

The threshold statutory requirements for the imposition of sanctions (that is, the first two elements) have been satisfied in this case. PAA does not dispute that it was registered as a broker-dealer at the time of the alleged misconduct, as it has admitted in its Answer that "[a]t all relevant times, [PAA] was a registered broker-dealer." Answer at 2. Nor does PAA dispute that it has been enjoined from future violations of the antifraud provisions of the securities laws by the District Court. Answer at 1 (not denying entry of such injunction). Accordingly, the only remaining determination concerns the third element, the appropriate sanction against PAA under Section 15(b) of the Exchange Act, which, as discussed above, is appropriate for summary disposition.

IV. Sanctions Under Section 15(b) Are Appropriate Against PAA

Sanctions under Section 15(b) of the Exchange Act may be imposed if it "is in the public interest." 15 U.S.C. § 78o(b)(4). The Commission has "repeatedly held that conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws." *Peter Siris*, Exchange Act Rel. No. 71068, 2013 WL 6528874, at *6 (Dec. 12, 2013) (internal quotation marks omitted), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). *See also Chris G. Gunderson, Esq.*, Exchange Act Rel. No. 61234, 2009 WL 4981617, at *5 (Dec. 23, 2009) ("An antifraud injunction 'ordinarily' warrants barring participation in the securities industry").

The considerations that are relevant in making a public-interest determination include the following factors, among others:

> [T]he egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). "The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive." *Gary M. Kornman*, 2009 WL 367635, at *6.

The public interest requires the revocation of the registration of PAA as a broker-dealer. All of the *Steadman* factors, as well as other considerations, strongly favor the imposition of such sanction against PAA.

First, PAA engaged in egregious and recurrent misconduct. As the District Court found, "the violations [of federal securities laws] continued over a period of years, and were not simply an isolated occurrence of bad judgment." Division Ex. 5 (Opinion & Order) at 2. And consistent with

that finding, the Court recognized the egregiousness of PAA and the other defendants' conduct as one of the factors that "weigh[ed] in favor of imposing significant penalties." *Id.* at 7.

Indeed, the evidence at trial showed that PAA, through Allen and others, sold AGF II securities from 2011 to 2014, and continued to sell an additional $6 million-plus worth of AGF II securities to more than 40 investors, earning more than $600,000 in commissions for themselves, *after* PAA's principals (Allen and Wasserman) admitted learning that the PPMs were false with respect to the audit status (after May or June 2012) and *without* disclosing the falsity in the PPMs to investors. *See, e.g.*, Division Ex. 4 (SEC Trial Exhibit/PX 172) at ¶ 66 ("By July 2012, it came to Wasserman's attention through a conversation with Allen that PAA had not received audited financial statements for AGF II"), at ¶¶ 44-47 (stipulating to PAA's annual sales from 2011 to 2014, which totaled more than $9 million), at ¶ 35 (stipulating that "[b]etween June 1, 2012 and December 31, 2013, Allen sold a total of $4,064,975 worth of AGF II units to 40 investors, for which PAA received approximately $406,498 in commissions"), at ¶ 36 (stipulating that "[b]etween June 1, 2012 and December 31, 2013, PAA registered representatives other than Allen sold $2,809,300 worth of AGF II units, for which PAA received $280,930 in commissions"), at ¶ 115 (a stipulated summary chart showing, among other things, gross sales and "10% payout" or commission to PAA for various quarters in 2012 and 2013); Division Ex. 3 at 502-505 (testimony of Lowry: that PAA, through Allen and Wasserman, had duties as a broker-dealer to halt further sales of AGF II securities once it learned that the PPMs were false or misleading); Division Ex. 4 (SEC Trial Exhibit/PX 187) at 45:25-46:14 (investor John McGowan's testimony: that Allen never discussed with McGowan any audit issue with AGF II from the fall of 2012 to the fall of 2014 when McGowan dealt with Allen); Division Ex. 3 (Trial Tr.) at 84:3-6 (testimony of Robert Spiegel, a PAA registered representative, who sold AGF II securities: "Q. And did anyone

at Portfolio Advisors Alliance ever tell you, you know, warn prospective investors that AGF II had not been audited if you talk to them? A. If that was the case, I don't remember that.").

Second, PAA engaged in misconduct with a high degree of scienter.[8] As the District Court pointed out, "[t]he jury found Defendants [PAA, Allen and Wasserman] liable for violations of the antifraud provisions of the securities laws, which required a finding that Defendants acted with *scienter*." Division Ex. 2 (Opinion & Order) at 2. *See also* Division Ex. 8 (Court's jury instructions) at pp. 19, 24-25, 27-35 (instructing that scienter must be established and found by a jury for violations of the antifraud provisions). And, as discussed above, the evidence at trial showed that PAA, through Allen and Wasserman, persisted in engaging in their misconduct – indeed, PAA and Allen, PAA's owner, intensified their sales efforts to investors – even *after* the purported time period in which Allen and Wasserman claimed they first learned of the falsity of the offering documents. *See* Division Ex. 4 (SEC Trial Exhibit/PX 172) at ¶ 81 (stipulating to Allen's purchase of PAA in early 2011), at ¶ 115 (stipulated summary chart showing PAA's sales for various time periods). Indeed, PAA did not dispute that "the majority of PAA's sales of AGF II units were made during 2013" (that is, after Allen and Wasserman learned of the falsity); that "Allen solicited the majority of investors in AGF II;" and that "Allen and PAA used the 2012 AGF PPM [that is, the false PPM] to solicit investors through at least the end of calendar year 2013." Division Ex. 4 (SEC Trial Exhibit/PX 172) at ¶¶ 41-43 (stipulations).

Third, PAA has not recognized the wrongful nature of its misconduct. Even after the jury verdict, PAA continues to press, as it did at both the trial and the remedies stage, that neither PAA nor its principals were responsible for the wrongdoing, and assigns blame to others. *See, e.g.*,

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[8] PAA is accountable for the actions of its agents, including Allen and Wasserman. *A.J. White & Co. v. SEC*, 556 F.2d 619, 624 (1st Cir. 1977). A company's scienter is imputed from that of the individuals controlling it. *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1096-97 nn.16-18 (2d Cir. 1972).

Answer at 2-3, 16 (blaming corporate securities counsel for failing to spot alleged inconsistencies in the offering documents – "they were not focused enough on identifying the legal issues before them"); at 4, 12-14 (blaming co-defendant Ralph Johnson of AGF II and arguing that "Johnson had been continuously misleading" PAA); at 4-9 (blaming prospective investors for failing to discern various risk and conflict of interest issues from the boiler-plate legal disclosures and the "forward-looking" statements in the offering documents); at 11-12, 16 (blaming another outside securities counsel for his alleged ineffective advice regarding amending an offering document for the AGF II offering).

To be sure, these efforts – now, collateral attacks – to avoid or minimize liability were fully litigated in the Civil Action. At trial, PAA's counsel attempted to do so through his opening, closing, witness examinations, and arguments to the Court, including regarding the jury instructions, throughout the two-week trial. *See, e.g.*, Division Ex. 3 (Trial Tr.) at 52-68 (defense counsel's opening statement); at 1127-1153 (his closing); at 297-301, 579-594, 655-679, 688-691 (his examinations of Johnson); at 697-713, 720-727 (his examination of Kahler); at 624-644, 648-649 (his *voir dire* of Russell); at 619-623, 649-653, 730-733, 976 (arguments and court rulings on the admissibility of Russell's testimony); at 981-992, 1002-1008, 1011 (his examination of Russell); at 785-792, 821-863, 873-876, 889-893 (his examinations of Allen); at 355-362, 759-768, 780-81 (his examination of Wasserman); at1198-1199 (jury instructions on advice of counsel defense). In addition, PAA attempted to make similar mitigation arguments during the post-trial remedies stage.[9] *See* Division Ex. 9 (PAA's Post-Trial Brief on Remedies) at 2-13. Accordingly, PAA is

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[9] As further proof that the issues presented have already been litigated, it appears that portions of PAA's Answer have been "cut and pasted" verbatim from PAA, Allen and Wasserman's ("PAA Defendants") Post-Trial Brief on Remedies. *Compare* Answer at 2-3 (discussing hiring of securities counsel) *with* Division Ex. 9 (PAA Defendants' Post-Trial Brief

precluded from relitigating the liability or remedies issues from the Civil Action here. *See James E. Franklin*, 2007 WL 2974200, at *4 (respondent cannot relitigate issues that were addressed in a previous civil proceeding against the respondent).

Fourth, PAA has not provided meaningful assurances against future violations. Instead, PAA has provided empty assurances that are belied by its continuing failure to appreciate the gravity of its wrongdoing, as PAA still claims that "this was a mistake that harmed no one, but of which the SEC (solely because it did not have to prove the elements of reliance or damages at trial) was able to prove a very serious securities law violation." Answer at 17. Moreover, PAA's claim that no investor was harmed is of no moment, as such claim does not mitigate the sanction. *See Gary M. Kornman*, 2009 WL 367635, at *9 ("We are unpersuaded by Kornman's claim that neither the investing public nor the Commission was harmed should mitigate the sanction.... [O]ur focus is on the welfare of investors generally and the threat one poses to investors and the markets in the future"). In short, given that PAA has shown no remorse, its claim that "[t]here is no chance of repetition" (Answer to OIP at 15) rings hollow. *See Johnny Clifton*, Exchange Act Rel. No. 69982, 2013 WL 3487076, at *14 (Jul. 12, 2013) ("[F]ailure[] to recognize the wrongfulness of his conduct presents significant risk that, given th[e] opportunity, he would commit further misconduct in the future.") (internal quotation marks omitted; brackets in original).

Fifth, PAA's business will present new opportunities for future violations in the securities industry. As the Commission explained, the "securities industry presents continual opportunities for dishonesty and abuse." *Mitchell M. Maynard*, Advisers Act Rel. No. 2875, 2009 WL 1362796, at *12 (May 15, 2009). There is nothing in the record, in the Civil Action, or in this proceeding, that shows that PAA has ceased (or intends to cease) its securities business as a broker-dealer. Rather,

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on Remedies) at 3-4 (same); Answer at 16 (discussing, among other things, defendants' "mistakes" and lack of investor losses") *with* Division Ex. 9 at 12 (same).

PAA defiantly asserts that it "has continued to engage in the securities business." Answer at 18. Thus, PAA's continuing operation in the securities industry poses too great of a risk to the investing public.

Finally, in addition to the consideration of the *Steadman* factors, revoking PAA's registration would serve as a deterrent to others from engaging in similar misconduct. *See Ralph W. LeBlanc*, Exchange Act Rel. No. 48254, 2003 WL 21755845, at *7 (July 30, 2003) (explaining that the sanctions will serve as a deterrent to others). As the Commission explained,

> [t]he proper functioning of the securities industry and markets depends on the integrity of industry participants and their commitment to transparent disclosure. Securities industry participation by persons with a history of fraudulent conduct is antithetical to the protection of investors.

John W. Lawton, 2012 WL 6208750, at *11.

Here, a jury found that PAA committed securities fraud. And the District Court, after full litigation, entered a permanent injunction, enjoining PAA from future violations of the antifraud provisions of the securities laws. Under these circumstances, PAA is unfit to remain as a broker-dealer in the securities industry. Accordingly, the registration of PAA as a broker-dealer should be revoked to protect the investing public.

V. Conclusion

For the foregoing reasons, the Division of Enforcement respectfully requests that this Motion for Summary Disposition be granted, and that the registration of PAA as a broker-dealer be revoked.

Dated: December 5, 2019
New York, New York

Respectfully submitted,

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Certificate of Service

In accordance with Rule 150 of the Commission's Rules of Practice, I hereby certify that true and correct copy of the foregoing motion was served on the following persons on December 5, 2019, and otherwise sent, by the method indicated:

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19576

In the Matter of **PORTFOLIO ADVISORS ALLIANCE, INC.,** **Respondent.**	**DECLARATION OF RICHARD HONG IN SUPPORT OF THE DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT PORTFOLIO ADVISORS ALLIANCE, INC.**

I, RICHARD HONG, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a senior trial counsel in the Enforcement Division, New York Regional Office, and an attorney of record in this case. As such, I have personal knowledge regarding the documents discussed herein.

2. I submit this declaration in support of the Division's Motion for Summary Disposition against Portfolio Advisors Alliance, Inc. ("PAA").

3. Attached hereto as **Division Exhibit 1** is a true and correct copy of the docket sheet in *SEC v. American Growth Funding II, LLC, et al.*, No. 16-cv-828-KMW (S.D.N.Y.) ("Civil Action") (as of November 8, 2019).

4. Attached hereto as **Division Exhibit 2** is a true and correct copy of the Complaint filed in the Civil Action.

5. Attached hereto as **Division Exhibit 3** consists of a true and correct copy of the trial transcripts in the Civil Action (nine volumes).

6. Attached hereto as **Division Exhibit 4** is a true and correct copy of the SEC's admitted trial exhibits in the Civil Action (74 exhibits).

7. Attached hereto as **Division Exhibit 5** is a true and correct copy of the Opinion & Order issued by the United States District Court (Hon. Kimba M. Wood) in the Civil Action.

8. Attached hereto as **Division Exhibit 6** consists of a true and correct copy of the Final Judgments (as to Howard J. Allen III and PAA; and as to Kerri L. Wasserman) entered in the Civil Action.

9. Attached hereto as **Division Exhibit 7** consists of a true and correct copy of the email exchange between counsel for the Division of Enforcement and Respondent PAA regarding discovery in this administrative proceeding.

10. Attached hereto as **Division Exhibit 8** is a true and correct copy of the Court's jury instructions given at the trial against PAA in the Civil Action.

11. Attached hereto as **Division Exhibit 9** is a true and correct copy of PAA's Post-Trial Brief on Remedies filed in the Civil Action.

Dated: December 5, 2019
New York, New York

Richard Hong