

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19617

In the Matter of

RANDALL S. GOULDING,

Respondent.

**DIVISION OF ENFORCEMENT'S
STATEMENT REGARDING THE
SEVENTH CIRCUIT'S AND THE
DISTRICT COURT'S INJUNCTIVE
ORDERS, AND MOTION TO DISMISS**

As directed by the Commission's September 13, 2023 Order Requesting Submissions, the Division of Enforcement states as follows:

1. The Commission initiated this matter on December 13, 2019, pursuant to an order instituting administrative proceedings ("OIP") against Randall S. Goulding pursuant to Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act Rel. No. 5417). The OIP was premised on a permanent injunction against Goulding, issued on November 12, 2019 in *SEC v. Nutmeg Group, LLC*, Case No. 09-cv-1775 (N.D. Ill.), ECF No. 1094, and provided the Commission with jurisdiction for this proceeding pursuant to Section 203(f) of the Advisers Act, 15 U.S.C. § 80b-3(f).

2. Goulding appealed from the district court's final judgment, including the injunctive order, while the parties were briefing the Division of Enforcement's motion for summary disposition. On July 7, 2022, the U.S. Court of Appeals for Seventh Circuit issued a decision sustaining the district court's conclusion that Goulding violated several provisions of the Advisers Act, and several rules thereunder, and ordered him to pay disgorgement,

prejudgment interest and a civil penalty.¹ See *SEC v. Goulding*, 40 F.4th 558, 563 (7th Cir. 2022).

3. The Circuit Court also found that the district court “should have forbidden with greater specificity what Goulding must not do,” and vacated the district court’s injunction with instructions to enter a more definitive prohibition. *Id.* at 563. This finding removed the Commission’s original jurisdictional predicate for imposing relief on Goulding in an administrative proceeding. See *In re Richard L. Goble*, SEC Rel. No. 68651, 2013 WL 15057, at *2 (Jan. 14, 2013) (dismissing administrative proceeding, by agreement, after Circuit court vacated underlying injunction against respondent); *In re Jilaine H. Bauer, Esq.*, SEC Rel. No. 9464, 2013 WL 5533144, at *2 (Oct. 8, 2013) (dismissing Rule 102(e) proceeding after Circuit Court vacated district court’s finding that respondent violated the securities laws).

4. On December 20, 2022, the district court entered a new order of permanent injunctive relief which prohibited Goulding from:

- (1) buying, selling or trading securities on behalf of an investment adviser or pooled investment vehicle;
- (2) managing securities investments for, or providing investment advice to, any person or entity, other than himself or immediate relatives, for compensation; and
- (3) providing consulting, valuation, compliance or other investment-related services to an investment adviser or pooled investment vehicle.

See Order of Permanent Injunctive Relief, *SEC v. Nutmeg*, 09-cv-1775 (N.D. Ill. Dec. 20, 2022), ECF No. 1162.

¹ Goulding continued to seek relief from the Circuit Court’s order by filing a petition for a writ of *certiorari* in the U.S. Supreme Court, and a petition for rehearing, which were denied on June 5, 2023 and August 21, 2023, respectively.

5. The Division of Enforcement has considered whether to seek leave to amend its existing OIP, or seek authorization to initiate a new administrative proceeding, citing the district court's new injunctive order as a basis for jurisdiction and administrative relief.

6. In light of the prohibitions set forth in the new injunctive order, the Division of Enforcement has determined not to seek leave to amend its existing OIP or to seek authorization to initiate a new administrative proceeding.

Accordingly, the Division of Enforcement respectfully requests the dismissal of this Administrative Proceeding.

Dated: October 11, 2023

DIVISION OF ENFORCEMENT

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CERTIFICATE OF SERVICE

In accordance with Rule 150 of the Commission's Rules of Practice, the Commission's Order dated March 18, 2020 concerning electronic service of papers, and the parties' March 23, 2020 joint stipulation and agreement regarding service of papers, on October 11, 2023 I served a copy of the forgoing by email on:

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/s/Robert M. Moye
Robert M. Moye
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