UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-19697

In the Matter of

RANDALL GOULDING, ESQ.

Respondent

OFFICE OF THE GENERAL COUNSEL'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION AND FOR AN ORDER PERMANENTLY DISQUALIFYING RANDALL GOULDING, ESQ. FROM APPEARING OR PRACTICING BEFORE THE COMMISSION AS AN ATTORNEY

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INTRODUCTION

OGC's Motion for Summary Disposition ("Motion") demonstrated that the District Court found that Goulding violated the Investment Advisers Act and a rule thereunder, and permanently enjoined him from future violations. OGC's Motion further established that the relevant public interest factors weigh decisively in favor of permanently disqualifying Goulding from appearing and practicing before the Commission as an attorney. Under Commission Rule of Practice 102(e)(3)(iv), OGC's showing that Goulding had been found to have violated the federal securities laws and been enjoined shifted the burden to him to show cause why he should not be disqualified from appearing or practicing. *See* 17 C.F.R. 201.102(e)(3)(iv). Goulding has failed –utterly-- to carry his burden. His Memorandum of Law in Opposition to the OGC's Motion for Summary Disposition ("Opposition" or "Opp.") acknowledges, as it must, that the District Court found that he violated the federal securities laws and permanently enjoined him. See Opp. At 1.[1] But it does not address, much less refute, OGC's showing that the relevant public interest factors decisively weigh in favor of permanently disqualifying Goulding from appearing and practicing before the Commission as an attorney. Instead, Goulding offers meritless arguments that this proceeding violates his due process rights; he also improperly attempts to relitigate the findings and the entry of the injunction in the District Court case. What his Opposition does not do is demonstrate the existence of any genuine issue of material fact that would preclude granting OGC's Motion. To protect the public interest and the integrity of the Commission's processes, this tribunal should grant OGC's Motion and enter an order

[1] Goulding complains that OGC (by not agreeing to support such a request) "denied" his request to stay this proceeding pending the outcome of his appeal of the District Court's judgment. Opp. at 1. Goulding's appeal, of course, is no impediment to this action. *See, e.g., James E. Franklin,* 2007 WL 2974200, at *4 n.15 (Oct. 12, 2007); *Chris G. Gunderson,* 2009 WL 4981617, at *5 (Dec. 23, 2009) (internal citations omitted). Moreover, the Rules of Practice do not provide for such a stay. *See* Rule of Practice 161 (setting forth requirements for seeking extensions of time, postponements and adjournments).

permanently disqualifying Goulding from appearing and practicing before the Commission as an attorney.[2]

ARGUMENT

Goulding's Opposition exhibits a misunderstanding of Rule 102(e) proceedings and sanctions, and proffers arguments based on those misconceptions. He makes two due process arguments, both directed at Rule 102(e)(1)(iii), which is not at issue in this Rule 102(e)(3) proceeding. First, he asserts that the District Court's Findings cannot be accorded preclusive effect under Rule 102(e)(1)(iii) because they were made under a "preponderance of the evidence" standard ("preponderance standard"). Opposition at 8-14. Goulding contends that 102(e) proceedings must use a "clear and convincing evidence" standard ("clear and convincing standard") because, in his view, they are "quasi-criminal," and Rule 102(e) suspensions are penal. *Id.* Goulding also contends that Rule 102(e)(1)(iii) is unconstitutionally vague as to whether it encompasses reckless violations of the securities laws. Opposition at 14-19. The remainder of Goulding's Opposition contests the validity of the District Court's injunction and Findings. He avers that the injunction is invalid because it did not track the statutory language or provide him notice of what conduct it prohibits. *Id.* at 19. Goulding further argues that the District Court's Findings regarding misappropriation, disgorgement, asset over-valuation, and improper asset transfers to affiliates were wrong, and that he therefore cannot be suspended unless his conduct is litigated *de novo*. *Id.* at 19-25. As explained below, Goulding's due

[2] Many statements in sections B and C of Goulding's Opposition lack citations to the record and are not matters subject to official notice. To the extent these statements are inconsistent with the District Court's Findings or the Final Judgment as to Randall Goulding (OGC Appendix Tabs 3 and 4), this tribunal should not rely on them.

process arguments are meritless, and his remaining arguments are irrelevant because he cannot contest the District Court's Findings and injunction in this proceeding.

OGC's Motion demonstrated that the relevant public interest factors weigh in favor of permanently disqualifying Goulding from practicing before the Commission as an attorney. OGC showed that Goulding engaged in egregious, repeated violations of the Advisers Act with a high degree of scienter, and that he fails to recognize the wrongfulness of his conduct or offer sincere assurances against future violations. OGC further demonstrated that Goulding's occupation as an attorney with years of experience in the securities industry who has practiced before the Commission will give him opportunities for future violations, and that a permanent suspension is necessary to deter him and other attorneys from engaging in similar misconduct. Goulding's Opposition offers nothing to counter OGC's showing. To protect the public interest and the integrity of the Commission's processes, and to deter Goulding and other attorneys from engaging in similar misconduct, this tribunal should grant OGC's Motion and enter an order permanently disqualifying Goulding from appearing and practicing before the Commission as an attorney.

I. Goulding's Due Process Arguments Are Meritless.

Goulding makes two due process arguments, each unavailing. First, he argues that the District Court's Findings cannot be given preclusive effect here because they were made under the preponderance standard, which is less stringent than the clear and convincing standard he contends should apply in Rule 102(e) proceedings. Opposition at 8-14. Goulding next argues that Rule 102(e)(1)(iii) is unconstitutionally vague, contending that it is unclear whether the Rule's "willfully violated or willfully aided and abetted violations of the federal securities laws" language encompasses reckless conduct. Opposition at 14-19.

Goulding's due process arguments rest on two faulty premises. First, he asserts that he has a property right to practice before the Commission by equating a Rule 102(e) suspension, which limits only appearing and practicing before the Commission, to disbarment or the suspension of a law license. Second, he posits that Rule 102(e) suspensions are penal and that Rule 102(e) proceedings are therefore quasi-criminal. Neither argument has merit.

A. Appearing and Practicing before the Commission is a Privilege, Not a Property Right.

Appearing and practicing before the Commission is a privilege, not a property right. *See* Exchange Act Section 4C and Rule 102(e)(1) (the Commission may censure or deny, temporarily or permanently, "the *privilege* of appearing and practicing") (emphasis added).[3] *See also In re Morris Mac Schwebel,* 1960 WL 56306, at *19 (Nov. 17, 1960) ("The right to appear and practice before the Commission as an attorney is, like membership in the bar itself, a privilege burdened with condition."). Goulding cites no cases holding that appearing and practicing before the Commission is a property right, and OGC is unaware of any such cases.

B. Rule 102(e) Suspensions Are Not Equivalent to Disbarments or License Suspensions.

A disbarment or suspension of a law license prohibits an attorney from practicing law entirely. In contrast, attorneys suspended under Rule 102(e) are only prohibited from appearing or practicing before the Commission, but are not otherwise prohibited from practicing law. *See, e.g., In re Emanuel Fields*, 1973 WL 149285, at *3 n. 20 (June 18, 1973) (rejecting attorney's due process challenge to his temporary Rule 102(e)(3) suspension and observing that "the impact of an order by us under our Rule 2(e) [Rule 102(e)'s predecessor] is not nearly so devastating as is that of the order of a court barring a man from practicing law at all. . . . A lawyer barred by us

[3] 15 U.S.C. § 78d-3; 17 CFR § 201.102(e)(1)

is still free to hold himself out to the world as a lawyer, to practice before all tribunals save this one . . . ."); *Altman v. SEC*, 666 F.3d 1322, 1327 (D.C. Cir. 2011) (rejecting attorney's separation of powers and federalism challenges to his Rule 102(e)(1) suspension because "[t]he sanction imposed on Altman is limited to appearances before the Commission and has no effect either on his ability to practice law in New York State and to appear before any court"). Goulding cites no authority holding that Rule 102(e) suspensions are the equivalent of disbarments or law license suspensions, and OGC is not aware of any such authority.

C. Sanctions Imposed Under Rule 102(e) Are Remedial, Not Penal.

The Commission promulgated Rule 102(e) to protect the integrity of its processes, and its sanctions are limited to those necessary to protect the investing public and the Commission from the future impact on its processes of professional misconduct. Thus its suspensions are remedial and not penal. *See, e.g., In re Carter*, 1981 WL 384414, at *5 (Feb. 28, 1981); *In re Steven Altman, Esq.*, 2010 WL 5092725, at * 19 (Nov. 10, 2010) ("The remedial sanctions available to the Commission in Rule 102(e) and Exchange Act Section 4C attorney disciplinary proceedings include a censure, temporary suspension, and permanent disqualification from practice before the Commission.) Rule 102(e) sanctions are forward-looking; they are not intended to punish an attorney for past misconduct.

Goulding's reliance on Justice Kavanaugh's concurring opinion in *Saad v. SEC,* 873 F.3d 297 (D.C. Cir. 2017), to support his claim that Rule 102(e) suspensions are penal is misplaced. The relevant issue in *Saad* was whether a lifetime ban that FINRA imposed on a broker was impermissibly punitive. *See* 873 F.3d at 304. The D.C. Circuit did not rule on this issue. Instead it remanded this question to the Commission to address the relevance, if any, of *Kokesh v. SEC*, 137 S. Ct. 1635 (2017) (holding that disgorgement is a "penalty" for purposes of 28

U.S.C. § 2462, which applies to any "action, suit, or proceeding for the enforcement of any civil fine, penalty, or forfeiture"). On remand, the Commission held that "*Kokesh* has no bearing on our determination that the bar 'is necessary to protect FINRA members, their customers, and other securities industry participants' and is therefore 'remedial, not punitive.'" *In re John M.E. Saad Application for Review of Disciplinary Action Taken by FINRA*, 2019 WL 3995968, at * 13 (Aug. 23, 2019). *Saad* therefore does not support Goulding's contention that Rule 102(e) suspensions are penal. Goulding cites no cases holding that Rule 102(e) suspensions are penal, and OGC is not aware of any such cases.

D. Rule 102(e) Proceedings Are Civil, Not Quasi-Criminal.

Because Goulding posits that Rule 102(e) proceedings are penal, he contends that Rule 102(e) proceedings are quasi-criminal. Goulding is wrong for several reasons. According to Black's Law Dictionary, a quasi-criminal proceeding is:

> A civil proceeding that is conducted in conformity with the rules of a criminal proceeding because a penalty analogous to a criminal penalty may apply, as in some juvenile proceedings. For example, juvenile delinquency is classified as a civil offense. But like a defendant in a criminal trial, an accused juvenile faces a potential loss of liberty. So criminal procedure rules apply.

See Black's Law Dictionary (11th ed. 2019).

As Rule 102(e) sanctions are remedial, Rule 102(e) proceedings are civil, not quasi-criminal proceedings. In addition, even if Rule 102(e) suspensions were deemed a penalty, they are in no way analogous to criminal penalties such as loss of liberty interests. Goulding cites no authority holding that Rule 102(e) proceedings are quasi-criminal, and OGC is unaware of any such authority. Moreover, *In re Ruffalo*, 390 U.S. 544 (1968) and *Daily v. Vought Aircraft Co.*, 141 F.3d 225 (5th Cir. 1998), which Goulding relies upon to support his assertion that 102(e) proceedings are quasi-criminal, are distinguishable. Both of those cases arose from a federal

court's disbarment of attorneys, not a regulatory agency's suspension of an attorney from practicing before that agency.

E. The District Court's Findings May Be Given Preclusive Effect Here Because They Were Made Using the Preponderance of Evidence Standard that Applies to This Proceeding.

Goulding's argument that the District Court's Findings cannot be given preclusive effect because Rule 102(e)(1)(iii) proceedings require a higher burden of proof than the preponderance standard used by the District Court is not only based on faulty premises, it is contrary to binding Supreme Court and Commission precedent. First, as noted above, this is a Rule 102(e)(3) proceeding, not a Rule 102(e)(1)(iii) proceeding.[4] More importantly, it is well-settled that the burden of proof in Commission administrative proceedings, including disciplinary proceedings under Rule 102(e)(1) or (e)(3), is a preponderance of the evidence. *See, e.g., Steadman v. SEC*, 450 U.S. 91 (1981); *In re William R. Carter*, 1981 WL 384414, at *1 n.3 (Feb. 28, 1981). This is the same burden of proof used by the District Court, so there is no due process impediment to giving preclusive effect to the District Court's Findings here – findings which followed extensive litigation where Goulding had ample notice of the charges against him and every opportunity to be heard and to present any defenses he believed he may have had.

Goulding acknowledges the holdings of *Steadman* and *Carter*, but contends that *Carter* wrongly extended the holding of *Steadman* to attorney Rule 102(e) proceedings, and that the Commission should adopt the clear and convincing standard in these proceedings. Opposition at

[4] Although Goulding's argument is directed toward Rule 102(e)(1)(iii), we assume that he would make the same argument regarding Rule 102(e)(3). It is worth noting, however, that Goulding's assertion that Rule 102(e)(1)(iii) "permits automatic disbarment or attorney discipline based solely on judicial findings" is incorrect. *See* Opposition at 8. Under Rule 102(e)(1)(iii), the Commission conducts an original administrative proceeding to determine whether the respondent willfully violated or willfully aided and abetted violation of the federal securities laws and, if so, the appropriate sanction.

13. But Section 556(d) of the Administrative Procedure Act ("APA"), 5 U.S.C. § 556(d), and *Steadman* prohibit the Commission from doing so here. *Steadman* arose from an administrative proceeding in which the Commission used the preponderance standard to find that the petitioner violated antifraud provisions of the federal securities laws and entered an order permanently barring him from associating with any investment adviser. *Steadman* at *91-93. The petitioner challenged the Commission's use of the preponderance standard in determining that he violated antifraud provisions, contending that it was required to use the clear and convincing standard given, among other things, the severity of the potential sanctions in such a proceeding. *Id*. at *95. The Supreme Court rejected this argument. It found that section 556(d) of the APA "commanded" use of the preponderance standard in disciplinary proceedings brought under the federal securities laws, and affirmed the Commission's use of that standard. *Id*. at *96. The Court noted that "where Congress has spoken, we have deferred to "the traditional powers of Congress to prescribe rules of evidence and standards of proof[.]" *Id*. at *95. The Commission has no more power than the Supreme Court to prescribe a different burden of proof for this proceeding than the preponderance standard Congress mandated in the APA. Thus, in *Carter*, the Commission correctly concluded that the preponderance standard applies in attorney Rule 102(e) proceedings. In light of the APA and binding precedent, Goulding's arguments that the clear and convincing standard should apply to Rule 102(e) proceedings fail.[5]

[5] Goulding's assertion that the majority of state bars and federal courts apply the clear and convincing standard in attorney disciplinary proceedings – even if correct --- is irrelevant because those proceedings are not governed by the APA. So too are the cases he cites involving state bar or federal court discipline of attorneys. Goulding relies upon *Charlton v. FTC*, 543 F.2d 903 (D.C. Cir. 1976), to support his contention that attorney disciplinary proceedings are quasi-criminal. But *Charlton* rejects his assertion here. As he tellingly fails to acknowledge, the D.C. Circuit held that the preponderance standard applied to the FTC's disciplinary proceeding. *Id*. at *908.

F. Rule 102(e)(3) is not Void for Vagueness.

Goulding argues that Rule 102(e)(1)(iii), which is not at issue here as this proceeding was not instituted under that provision, is unconstitutionally vague.[6] Under Rule 102(e)(1)(iii), after notice and a hearing, the Commission may suspend a respondent who has "willfully violated, or willfully aided and abetted violation of, the federal securities laws or the rules and regulations thereunder." *See* 17 CFR § 201.102(e)(1)(iii). Goulding contends that the District Court's finding that he "intentionally or recklessly" violated the Advisers Act and one of its rules establishes, at most, only reckless violations, and asserts that it is unclear whether Rule 102(e)(1)(iii) encompasses reckless violations. Opposition at 15-16. He acknowledges case law holding that "willful" encompasses recklessness for purposes of the federal securities laws and industry bars. Nonetheless, he claims that Rule 102(e)(1)(iii) proceedings are quasi-criminal and that therefore "willfully" should be interpreted to require "knowing or intentional" violations. Opposition at 18.

Goulding's vagueness argument is no impediment to this proceeding because Rule 102(e)(3)(i) does not require a willful violation of the federal securities laws. Rule 102(e)(3)(i)(A) has no state of mind requirement; it allows the Commission to suspend any respondent who has been permanently enjoined by a court regardless of the respondent's intent. Under Rule 102(e)(3)(i)(B), the Commission may suspend a respondent who has been found to have violated, or aided and abetted violation of, the federal securities laws *unless* the court or administrative judge in the predicate action explicitly found that the violations were *not* willful. The District Court made no such finding regarding Goulding's violations. And, as Goulding was temporarily suspended under both subsection (A) and (B) of Rule 103(e)(3), *see* Order Instituting

[6] OGC assumes that Goulding would argue that Rule 102(e)(3) is similarly vague, but as shown below, that argument is untenable.

Proceedings, even if there were an ambiguity regarding the meaning of "willfully," the injunction, standing alone, would still provide a basis to suspend him.

Moreover, Rule 102(e)(3) does not suffer from the defect that the vagueness doctrine guards against. The purpose of the vagueness doctrine is to ensure that the public is given fair notice as to what conduct would trigger application of a particular provision. *See, e.g., Dirks v. SEC,* 802 F.2d 1468, 1471 (D.C. Cir. 1986) ("the core concern of vagueness doctrine . . . [is] that an individual be provided with sufficient warning that certain conduct is proscribed"). Goulding acknowledges as much. Opposition at 17. Here, Rule 102(e)(3) gave Goulding fair notice as to what conduct gives rise to a suspension – namely, conduct that violates the federal securities laws /or subjects that person to a permanent injunction against further violations. Rule 102(e)(3)(i) provides, in relevant part, that:

> (i)The Commission with due regard for the public interest and without preliminary hearing may, by order, temporarily suspend from appearing or practicing before it any attorney, accountant, engineer or other professional or expert who has been by name:
>
> (A) permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the federal securities laws or of the rules and regulations thereunder; or
>
> (B) found by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party . . . to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of Federal securities laws or of the rules and regulations thereunder.

See 17 CFR §§ 201.102(e)(3)(i)(A), (B).

The Commission provided clear notice in Rule 102(e)(3) that it may suspend a respondent that is found culpable in a predicate action – by either the entry of an injunction or a finding that the respondent violated or aided and abetted violation of the federal securities laws. The fact that the respondent's predicate culpability is established in prior litigation between the

Commission and the respondent does not undermine that respondent had adequate notice that he could be subject to suspension.[7] The sole purpose of a Rule 102(e)(3) proceeding is to determine the appropriate sanction in light of the injunction or findings of federal securities law violations.

Goulding's vagueness argument would fail even if this were a Rule 102(e)(1)(iii) proceeding. Under Rule 102(e)(1)(iii), the Commission may suspend a person, after notice and opportunity for a hearing, if it finds that the person "willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder." *See* 17 CFR § 201.102(e)(1)(iii). The District Court found that Goulding's violations were "intentional or reckless." OGC Appendix Tab 3 at p. 49, ¶¶ 31, 32. Even if Goulding were correct that the District Court's Findings establish no more than reckless violations, his acknowledgment that for purposes of civil violations, including violations of the federal securities laws and industry bars, "willful" encompasses recklessness, Opposition at 15 n.2 & 16, is fatal to his vagueness argument. *See, e.g., Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) ("willfulness" means intentionally or recklessly committing an act that constitutes a violation of the securities laws); *Sundstrand Corp. v. Sun Chemical Corp*., 553 F.2d 1033, 1039-1040 (7th Cir.), cert. denied, 434 U.S. 875 (1977) (equating recklessness and "willful fraud"); *Safeco Insurance Co. v. Burr*, 551 U.S. 47, 57 (2007) (where willfulness is a statutory condition of civil liability, it covers reckless as well as knowing violations). Thus, "willfully," as used in Rule 102(e)(1)(iii), encompasses reckless violations, and the ambiguity Goulding seeks to create is not supported by the relevant judicial precedents.

[7] Goulding had ample notice of and opportunity to be heard on these issues in the underlying action.

Goulding attempts to escape the precedent holding that in civil matters like this proceeding "willful" encompasses recklessness. He argues that Rule 102(e)(1)(iii) proceedings are quasi-criminal, and that "willfully" must therefore be interpreted, as he contends it is in criminal statutes, to require a "knowing" violation. Opposition at 18. This argument is unavailing. As explained above, Rule 102(e) proceedings are not quasi-criminal and, even if they were, it does not follow that criminal standards of intent govern them. The cases Goulding relies upon to support this argument are not to the contrary. For example, Goulding relies on *Safeco, id.*, Opposition at 16. In *Safeco*, the defendants argued that they could not be liable for "willfully fail[ing] to comply" with the Fair Credit Reporting Act because "willfully" went "only to acts known to violate the Act, not to reckless disregard of statutory duty." *Id*. at 56-57. The Supreme Court rejected that argument, finding that "where willfulness is a statutory condition of civil liability, we have generally taken it to cover not only knowing violations of a standard, but reckless ones as well." *Id*. at 57 (internal citations omitted). Goulding quotes the Court's statement that, "When the term 'willful' or 'willfully' has been used in a criminal statute, we have regularly read the modifier as limiting liability to knowing violations," Opposition at 16 (quoting *Safeco*, 551 U.S. at 57 n.9). But he omits the Court's next sentence, which shows that this proposition is limited to criminal statutes and the reason for that limitation: "This reading of the term, however, is tailored to the criminal law, where it is characteristically used to require a criminal intent beyond the purpose otherwise required for guilt." *Id*. Likewise, none of the other authorities Goulding cites support his novel contention that Rule 102(e)(1)(iii) should be interpreted under criminal intent standards.

II. Goulding Cannot Challenge the Court's Injunction or Findings in This Proceeding.

Goulding's remaining points attack the District Court's injunction and Findings. Opposition at 19-25. However, as the Commission noted in denying Goulding's request to lift the temporary injunction, see Order Denying Motion to Lift Temporary Suspension and Directing Hearing at 3 & n. 8 (April 21, 2020), he cannot relitigate those issues in this proceeding. Rule 102(e)(3)(iv) provides, in relevant part, that "the petitioner may not contest any finding made against him or her . . . in the judicial or administrative proceeding upon which the proceeding under this paragraph (e)(3) is predicated." *See* Rule 102(e)(3)(iv), 17 CFR § 201.102(e)(3)(iv).

Accordingly, the Commission has "long refused to permit a respondent to re-litigate issues that were addressed in previous civil proceedings against the respondent." *See, e.g., In re Demetrious Julius Shiva*, 1997 WL 112328, at *2 (Mar. 12, 1997) ((rejecting attempts to challenge injunction and noting that "we have long refused to permit a respondent to re-litigate issues that were addressed in a previous civil proceeding against the respondent"); *In re Joseph P. Galluzzi*, 2002 WL 1941502, at *3 (Aug. 23, 2002) ("a party cannot challenge his injunction or criminal conviction in a subsequent administrative proceeding."). The appropriate forum for Goulding to contest the Court's injunction and/or Findings is the court of appeals. *See, e.g., In re Jose P. Zollino*, Exchange Act Release No. 55107 (Jan. 16, 2007), 2007 WL 98919, at *4 n.20 (refusing to consider respondent's challenges to underlying injunctive and criminal proceedings in follow-on industry bar proceeding and observing that, "those matters are properly addressed to the appellate court."); *In re Michael Batterman*, 2004 WL 2785527, at * 3 (Dec. 3, 2004) (challenges to the basis of a prior proceeding are properly addressed to the appellate court).

Thus, even if Goulding's challenges to the District Court's injunction and Findings were meritorious – which they are not – he cannot litigate them in this Rule 102(e)(3) proceeding.[8]

III. Goulding Has Failed to Carry His Burden to Show Cause Why He Should Not Be Disqualified, and OGC's Motion for Summary Disposition Should Be Granted.

OGC's Motion showed that the District Court permanently enjoined Goulding, and that it found he violated provisions of the federal securities laws and the rules and regulations thereunder (and made no finding that Goulding's violations were not willful). OGC's Motion further showed that the relevant public interest factors weigh decisively in favor of permanently disqualifying Goulding from appearing and practicing before the Commission as an attorney. In particular, OGC showed that Goulding: (1) engaged in egregious and repeated violations with a high degree of scienter; (2) has not acknowledged the wrongfulness of his conduct or provided reasonable assurances that he will not engage in future misconduct; and (3) will have opportunities to engage in future violations because he is an attorney with years of securities industry experience who has practiced before the Commission. OGC further showed that it is necessary to permanently disqualify Goulding from appearing and practicing before the Commission to deter him and other attorneys who might be tempted to engage in similar misconduct.

Under Rule 102(e)(3)(iv), upon OGC's showing regarding the District Court's injunction and findings, the burden shifted to Goulding to show cause why he should not be censured or disqualified. *See* 17 CFR § 201.102(e)(3)(iv). Goulding has failed to carry his burden. He cannot deny that the District Court permanently enjoined him and found that he violated the federal securities laws. He failed to address, much less refute, OGC's showing that the relevant

[8] Because Goulding cannot contest the District Court's Findings here, OGC will not address his arguments concerning them.

public interest factors decisively weigh in favor of permanently disqualifying him from appearing and practicing before the Commission as an attorney. He has failed to demonstrate the existence of any genuine issue of material fact that would preclude granting OGC's Motion, and there is no need for a hearing on this matter. To protect the public interest and the integrity of the Commission's processes, Goulding should be permanently disqualified from appearing and practicing before the Commission as an attorney.

CONCLUSION

For the foregoing reasons, OGC respectfully requests that its motion for summary disposition be granted, and that an order be issued permanently disqualifying Goulding from appearing or practicing before it as an attorney.

DATED: July 20, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify, in accordance with Rule of Practice 250(e), 17 C.F.R. 201.250(e), that, according to Microsoft Word, the foregoing **OFFICE OF THE GENERAL COUNSEL'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSTION AND FOR AN ORDER PERMANETNLY DISQUALIFYING RANDALL GOULDING, ESQ. FROM APPEARING OR PRACTICING BEFORE THE COMMISSION AS AN ATTORNEY** contains 5322 words.

Dated: July 20, 2020

/s/ Donna S. McCaffrey

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2020, I caused a true and correct copy of the **OFFICE OF THE GENERAL COUNSEL'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSTION AND FOR AN ORDER PERMANENTLY DISQUALIFYING RANDALL GOULDING, ESQ. FROM APPEARING OR PRACTICING BEFORE THE COMMISSION AS AN ATTORNEY,** to be served upon the parties and persons entitled to notice below, as indicated:

Via electronic filing to:
Vanessa Countryman
Secretary U.S. Securities & Exchange Commission
100 F. Street, NE Washington, DC 20549
Via Email to:
Hon. Carol Fox Foelak
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/s/ Donna S. McCaffrey