UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19733

In the Matter of

NICHOLAS J. GENOVESE,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT NICHOLAS J. GENOVESE AND MEMORANDUM OF LAW IN SUPPORT

DIVISION OF ENFORCEMENT
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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 Nicholas J. Genovese ("Genovese").[1] This is a follow-on proceeding arising from a criminal securities fraud conviction imposed against Genovese, owner of Willow Creek Advisors, LLC ("Willow Creek Advisors") and Willow Creek Investments, LP ("Willow Creek Fund"), after an entered guilty plea and full briefing on sentencing, in the United States District Court for the Southern District of New York in the associated criminal case, *USA v. Nicholas Joseph Genovese*, 18 Cr. 183 (WHP) ("Criminal Case"). Because a judgment of conviction has been entered against Genovese,[2] the sole determination here concerns the appropriate sanction against him under Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"). This motion for summary disposition should be granted, and permanent associational bars against Genovese should be imposed as Genovese was associated with an investment adviser at the time of the misconduct that resulted in his criminal guilty plea, and such bars are in the public interest.

[1] Exhibits in support of this motion are attached to the Declaration of Alexander Vasilescu, dated March 22, 2024 ("Decl.").

[2] The judgment of conviction in *USA v. Nicholas Joseph Genovese*, 18 Cr. 183 (WHP) and related criminal complaint and subsequent indictment are attached as Exhibits 1, 1B and 1C to Decl. The transcript of Genovese's criminal plea allocution is attached as Exhibit 2 to Decl. The transcript of his sentencing is attached as Exhibit 3 to Decl. Genovese was subject to a final judgment with a permanent injunction and $1 million civil penalty in the Commission's parallel civil case after the court granted summary judgment against Genovese and his two entities. *SEC v. Nicholas Genovese, et al*, 18 cv. 942 (JGK) ("SEC Case"). The Court's amended summary judgment order, found at *SEC v. Genovese*, 553 F.Supp.3d 24 (SDNY, August 6, 2021), made findings and is attached as Exhibit 4 to Decl. The final judgment in the SEC Case is attached as Exhibit 5 to Decl.

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I. Procedural History and Factual Background

Genovese was the sole principal, owner and Managing Director of Willow Creek Fund and the sole owner of Willow Creek Advisors, an unregistered investment adviser. Order Instituting Administrative Proceedings, dated March 24, 2020 ("OIP"), File No. 3-19733, Section II, at ¶ 1. While he is listed on FINRA's Central Registration Depository ("CRD") database for financial representatives associated with broker-dealers, Genovese holds no securities licenses and was never associated with any registered broker-dealer or registered investment adviser. (Decl. Ex. 4 at 33). [3] Genovese has an extensive criminal fraud history, convicted of five separate criminal actions between 1990 and 2004, including theft by deception, grand larceny (three times), identity theft, and second-degree scheme to defraud in Illinois and New York. (Decl. Ex. 4 at 33). Additionally, he filed for and received a bankruptcy discharge under Chapter 7 of the U.S. Bankruptcy Code in 1998 and 1999 while serving a prison sentence. (Decl. Ex. 4 at 33). From in or about January 2015 through February 2018, Genovese solicited investments for Willow Creek Fund. While doing so, he never once revealed any of his past criminal history or bankruptcy filings. (Decl. Exs. 1, 1C, 2, and 4 at 33).

A. The SEC Case and Criminal Case against Genovese and His Entities.

In February 2018, the Commission charged Genovese, Willow Creek Fund, and Willow Creek Advisors with securities fraud for raising at least $5.32 million from at least 6 investors through material misrepresentations and omissions about Genovese's own history and Willow Creek Fund's size and performance. Additionally, Genovese misappropriated investor funds that

[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 SEC Case.

comprised Willow Creek Fund's assets. (*See* Decl. Ex. 6, Complaint in SEC Case ("Complaint").) Genovese was charged with defrauding investors in violation of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and Sections 206(1), 206(2), and 206(4) of the Advisers Act, and Rule 206(4)-8 thereunder. (Decl. Ex. 6 at ¶¶ 7, 32-40.)

The Complaint alleges that Genovese and Willow Creek Fund, from at least 2014, solicited investment funds by knowingly or recklessly making oral false statements about and by distributing private placement memoranda repeating these falsehoods. (Complaint, ¶¶ 1 -5, 12-31.) Further, Genovese misappropriated funds to: (a) fund securities trading in his personal brokerage account – Willow Creek Fund itself appears to have never had its own brokerage account; and (b) fund Genovese's lifestyle by paying at least $260,000 for, among other things, ATM cash withdrawals, food, hotel and transportation charges, including being chauffeured in a rented Bentley to meet with investors or potential investors.). (*See also* Complaint, Decl. Ex. 6 at ¶¶ 1-5, 7, 32-40); (Ex. 4 (Summary Judgment Decision) at 553 F.Supp.3d at 32 to 33).

The same day that the Commission charged Genovese and his two entities, Genovese was arrested on a criminal complaint filed by the United States Attorney's Office for the Southern District of New York ("USAO") that charged him with committing securities fraud and other felonies. (Decl. Ex. 1B.) On March 1, 2018, the USAO obtained an indictment of Genovese charging him with securities fraud and other felonies. (Decl. Ex. 1C.) In October 2019, Genovese pled guilty to one count of securities fraud in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.[4] (Decl. Ex. 2 (Criminal Plea Hearing Transcript).) As part of this plea

[4] Genovese, Willow Creek Fund, and Willow Creek Advisors were represented by the same counsel.

agreement, Genovese admitted that he had committed securities fraud from at least January 2015 until on or at least February 2nd, 2018, and agreed to a restitution obligation of $11,211,704 (Decl. Ex. 1 (Criminal Judgment) and Decl. Ex. 7 (Restitution Order).) In his plea allocution, Genovese admitted to knowingly misleading investors and potential investors about his education and work experience for the purpose of inducing them to invest with him and Willow Creek Fund. (Decl. Ex. 2 (Guilty plea transcript) 9:14 to 22:7.)

After Genovese's guilty plea, the District Court in the Criminal Case held a sentencing hearing on February 11, 2020. (Decl. Ex. 3.) Judge William H. Pauley III found that Genovese posed a significant danger to the public:

> In short, he is a danger to the community, truly a predator, unlike any I've encountered in more than 21 years on the bench.

(Decl. Ex. 3 at 82:9-11.)

Judge Pauley also worried that Genovese would continue to defraud the public after being released from prison:

> This Court is concerned that when Mr. Genovese is released from prison he'll concoct another more outrageous scheme because that's been his trajectory for the last 30 years.

(Decl. Ex. 3 at 82:6-8.)

After the sentencing hearing, the District Court in the Criminal Case entered a criminal judgment against Genovese, dated February 12, 2020 (Decl. Ex. 1) and restitution order, dated April 20, 2020 (Decl. Ex. 7), which sentenced Genovese to 140 months of imprisonment and ordered him to pay restitution in the total amount of $11,211,704, to be returned to the victims. (Decl. Exs. 1 and 7.)

In a later decision on a motion by Genovese seeking to be released from prison because of the COVID-19 crisis, the Court refused to release Genovese and opined that:

> Stated simply, Genovese's criminal conduct was abhorrent. He convinced unsuspecting victims to entrust their savings with his bogus investment firm, Willow Creek Advisors LLC. To gain their trust, Genovese lied to his victims. He claimed to be an heir to the Genovese Drug Stores family fortune and a graduate of Dartmouth College's Tuck School of Business. And he fabricated his employment history, claiming he previously worked at Goldman Sachs and Bear Stearns. Rather than manage his victims' money, Genovese squandered it on – among other things – luxury boats and rental cars, a private chauffer, a $50,000 gala table at the New York Philharmonic, and numerous vacations.

(Decl. Ex. 8 (Opinion & Order dated July 15, 2020) at 8 (citation omitted).)

After his criminal conviction and while in prison, Genovese litigated the SEC Case. On July 14, 2021, the Court granted the Commission's motion for summary judgment against Genovese and his two entities. (Decl. Ex. 4.) On August 4, 2021, the Court entered a final judgment against Genovese and his two entities, imposing permanent injunctions against all defendants and a $1 million civil penalty against Genovese. (Decl. Ex. 5.)

B. The Follow-on Proceeding

On March 24, 2020, the Commission instituted this follow-on administrative proceeding under Section 203(f) of the Advisers Act against Genovese. IA Release No. 5468. On July 15, 2021, the Commission issued an order directing additional submission by Genovese and filing of proof of service by the Division of Enforcement. IA Release No. 5578. On October 18, 2021, the Commission issued an order regarding service. IA Release No. 5891. On April 19, 2023, the Commission issued an order directing response from Genovese. IA Release No. 6289. On July 27, 2023, the Commission issued a renewed order directing response from Genovese. IA Release No. 6357. On August 15, 2023, Respondent's certificate of service was filed. On December 13, 2023, Genovese filed his answer to the allegations ("Genovese Answer"). On February 5, 2024, the Commission issued an order regarding prehearing conference. IA Release No. 6542. On March 11, 2024, the Commission issued an order allowing the Division to file a motion for

summary disposition and set a briefing schedule for the parties that required the Division to file its motion by March 22, 2024. IA Release No. 6571.

In his answer, Genovese admitted his guilty plea in the parallel criminal case and acknowledged the entry of the final judgment, including the $1 million civil penalty in the SEC Case, but otherwise denied the claims in the OIP, including that he never acted with scienter to defraud investors. Genovese also raised the defense that this administrative case is unconstitutional. *See* Genovese Answer.

In his answer, Genovese also claimed that the Division has not provided him with the "investigative file," "copies of the complaints against me" and other materials. Genovese Answer.

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 of 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/or convicted and the sole determination concerns the appropriate sanction. *See In re Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 WL 294717 (Feb. 4, 2008) (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 Release 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*, Investment Advisers 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 criminal 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).

III. Summary Disposition Against Genovese Is Appropriate.

Section 203(f) of the Advisers Act authorizes the Commission, after notice and an opportunity for a hearing, to determine whether certain remedial measures – including the placing of limitations on a respondent's association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization ("NRSRO"), including a bar or a suspension not exceeding twelve months, or a censure – are appropriate against a person, such as Genovese, provided the person was associated, or was seeking to become associated, with an investment adviser at the time of the alleged misconduct. Such remedial measures are appropriate where the Commission finds, after notice and opportunity for hearing, that they are in the public interest and that respondent has been convicted of any offense specified in paragraph (2) or (3) of Advisers Act Section 203(e) within ten years of the commencement of the proceedings under Section 203(f).

A. There Is No Genuine Issue of Material Fact.

The OIP alleges that, from at least 2015 to February 2018, Genovese owned and operated Willow Creek Advisors, and that Willow Creek Advisors was an investment adviser. OIP at II.A.1. Genovese admitted in his guilty plea in the criminal case that he was associated with an investment adviser at the time of the alleged misconduct (that is, he was associated with Willow Creek Advisors). (Decl. Ex. 2 at 17:9-21.)

The OIP further alleges that, on October 19, 2018, Genovese pled guilty to one count of securities fraud in violation of 17 U.S.C. 78j(b) and 78ff and title 17 of the Code of Federal Regulations, Section 240.10b-5. OIP at II.B.2. The OIP further alleges that, from on or about January 2015 through at least February 2018, Genovese engaged in a scheme to defraud investors where he solicited millions of dollars in investments based on material misrepresentations and omissions concerning, among other things, his background, his educational and professional experience and his credentials and qualifications for managing a hedge fund. *Id.* at II.B.3. In his Answer, Genovese admitted he was criminally convicted. The criminal count to which Genovese pled guilty is one that is specified in paragraph (2) of Advisers Act Section 203(e) (15 U.S.C. §§ 78k(b) and 78ff and 17 C.F.R. § 240.10b-5 (Securities Fraud)). (See Genovese Answer and Decl. Ex. 1 (criminal judgment)). Genovese's conviction occurred within ten years of this proceeding. Thus, there is no genuine issue of any material fact as to Genovese's association with an investment adviser, and his conviction, within 10 years of the filing of the OIP, of a crime specified in Advisers Act Section 203(e)(2). Therefore, the only remaining determination is the appropriate sanction against Genovese under Section 203(f) of the Advisers Act, which as discussed above, is appropriate for summary disposition.

B. Genovese Should Be Permanently Barred from the Securities Industry.

The public interest requires that Genovese be permanently barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or NRSRO.

The Commission has "repeatedly held that conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the most severe 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 Gary M. Kornman*, 2009 WL 367635, at *4 (Feb. 13, 2009) (finding that a criminal conviction justifies a collateral bar under both the Advisers Act Section 203(f) and the Exchange Act Section 15(b)).

Similarly, a "plea agreement and criminal conviction are substantial evidence supporting the conclusion that it is in the public interest to permanently bar" a respondent from association with a broker or dealer or investment adviser. *Michael C. Pattison, CPA*, Exchange Act Rel. No. 3407, 2012 WL 4320146, at *7 n. 39 (Sept. 20, 2012) (quoting *Brownson v. SEC*, 66 F. App'x 687, 688 (9th Cir. 2003)) (unpublished). Indeed, "the importance of honesty for a securities professional is so paramount that we have barred individuals even when the conviction was based on dishonest conduct unrelated to securities transactions or securities business." *Gary M. Kornman*, 2009 WL 367635, at *7.

When considering whether an administrative sanction serves the public interest, the Commission considers the factors identified in *Steadman v. SEC*:

> [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.

Kornman, 2009 WL 367635, at *6 (citing *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 imposition of full collateral bars against Genovese is in the public interest. Genovese pled guilty to committing securities fraud by falsifying information about himself and Willow Creek Fund for the purpose of misleading investors and potential investors. All of the *Steadman* factors, as well as other considerations, strongly favor the imposition of such sanctions in order to protect the public from further fraudulent activity.

Genovese's misconduct was egregious. As found in the Criminal Case, from January 2015 through February 2018, in committing his securities fraud violations, Genovese defrauded 10 or more victims who lost $11,211,704. (Decl. Exs. 1, 2, and 3 at 75:12-18, and 7). Additionally, he placed multiple individuals' livelihoods at risk, as noted above. (Decl. Ex.8 at 8). In certain instances, Genovese misappropriated entire retirement accounts, irrevocably changing peoples' lives for the worse. (*See* sentencing testimony of victim Dr. Mitchell Levine at Decl. Ex. 3 at 12:9 to 21:5; victim Mr. Granville Beals at Decl. Ex. 3 at 21:6 to 28:12; victim Mr. Geoff Orley at Decl. Ex. at 28:13 to 30:14; and victim Mr. Aaron David Blank at Decl. Ex. 3 at 30:15 to 31:12).

Genovese's violations were not isolated, and his conduct was recurring, involving multiple investors and a fraud that lasted several years. The court in the criminal case recognized the scope of Genovese's conduct in finding that "the breadth and cruelty of Genovese's fraudulent scheme necessitated the 140-month sentence." (Decl. Ex. 8 at 8). As the court found, "it bears repeating that Genovese's scheme was the latest chapter in an escalating saga of fraudulent conduct spanning decades. His prior custodial sentences include: (1) a 10-month sentence in Illinois for credit card

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fraud; (2) concurrent 30-month sentences in Illinois for misusing credit cards; and (3) concurrent sentences of 36-to-72 months in New York for fraud-related crimes. Those terms of imprisonment did not deter Genovese." (Decl. Ex.8 at 9.)

Genovese's degree of scienter was very high. In committing his securities fraud violations, he knowingly lied about his background, about where he worked, and where he obtained his education – facts that he certainly should know. (Decl. Ex. 2 at 17:3-17, 19:17-22, 20:12-24, 21:9-22:6.) Moreover, as the Criminal Case found, given that he had previously committed many crimes, Genovese clearly understood he was committing felonies. (See Decl. Ex. 3 at 62:12-21(sentencing transcript) (discussing Genovese's "nine prior convictions, several of them for fraud-related crimes" and "multiple stints in prison")).

Genovese has provided no sincere assurances that he would not again commit securities fraud violations nor does he recognize the wrongful nature of his conduct. In Genovese's Answer, he seeks to run away from his criminal plea by stating "I was forced to plead guilty under the threat of punitive punishment by adding twice as much time to my sentence." (Genovese Answer). In denying the allegations of the OIP, he suggests that he never had an "intent to deceive." (Genovese Answer). He further states "I did not intentionally deceive clients or otherwise." (Genovese Answer).

The likelihood of recurring misconduct when Genovese is released from prison is high, given his prior criminal history, and the long period over which this fraud took place. The Court in the Criminal Case found:

> There's also a compelling need for specific deterrence because Mr. Genovese is a serial fraudster. He has 17 arrests and nine convictions dating back to December 1989, when he was only 24. Virtually all of them relate to fraud of one kind or another, with the dollar amounts escalating each time.

(Decl. Ex. 3 at 78:5-9.)

> This Court is concerned that when Mr. Genovese is released from prison he'll concoct another more outrageous scheme because that's been his trajectory for the last 30 years.

(Decl. Ex. 3 at 82:6-8.)

Further, in addition to the consideration of the *Steadman* factors, imposing collateral bars 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, Investment Advisers Act Rel. No. 3513, 2012 WL 6208750, at *11 (Dec. 13, 2012).

IV. The Division Fulfilled Its Discovery Obligation Under Rule 230.

There is no merit to Genovese's claim in his answer that the Division did not fulfill its discovery obligation under Rule 230.[5] After filing the OIP in March 2020, the Division produced all non-privileged documents in this case to Genovese in electronic form, first on a thumbdrive and then, at the request of Genovese, on a DVD. See Division letters to Genovese dated June 2, 2020 and July 31, 2020, attached as Exhibits 9 and 10 to Decl. The electronic production was Bates-stamped SEC-LIT-EPROD-000000001 to SEC-LIT-EPROD-000007067. Altogether, 7,068 pages of documents were produced to Genovese. (Decl. ¶ 3). The Division produced all documents in its possession required by Rule 230 of Rules of Practice. Among other things, the

[5] The Division's production in this administrative proceeding was the same production for its discovery obligation in the SEC Case in the district court. (Decl. Exs. 9 & 10.) Genovese raised the same discovery argument in the SEC Case that he is raising now, and the court rejected this argument in its summary judgment decision. (Decl. Ex. 4 at 38 to 39.)

Division produced all financial and non-financial documents produced pursuant to subpoena relating to Genovese and his entities, and communications with, and documents produced by, Genovese's victims/clients. (Decl. ¶ 3). As the investigation leading to the enforcement action was expedited and led to an emergency action filed in parallel to the criminal case, there was no investigative testimony taken and thus no transcripts produced.

V. This Proceeding Does Not Violate the Constitution.

Genovese incorrectly argues that the Fifth Circuit's decision in *Jarkesy v. SEC*, 34 F.4th 446, 450 (5th Cir. 2022), *cert. granted*, 143 S. Ct. 2688, (2023), and *cert. denied*, 143 S. Ct. 2690 (2023), "establishes that [Commission] ALJs are unconstitutional and therefore ... this Commission hearing also violates [his] constitutional rights...." Genovese Answer. In *Jarkesy*, the majority applied a flawed reading of the Supreme Court's decision in *Free Enterprise Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477 (2010) to hold, over a dissent, that "the statutory removal restrictions for SEC ALJs are unconstitutional." *See Jarkesy*, 34 F.4th at 463.[6] But any constitutional questions regarding the removability of the Commission's administrative law judges are irrelevant to this proceeding, over which the Commission, not an administrative law judge, is presiding. *See* OIP.

To the extent that Genovese is arguing that *Jarkesy* has exposed additional constitutional flaws in the follow-on proceeding against him, those challenges fail. There are no non-delegation concerns because, in Section 203(f) of the Advisers Act, Congress expressly directed that such proceedings shall occur before the Commission. *Cf. Jarkesy*, 34 F.4th at 462 (explaining that

[6] *Jarkesy*'s removal holding stands in tension with recent decisions of at least two other circuits. *See, e.g.*, *Calcutt v. FDIC*, 37 F.4th 293, 319 (6th Cir. 2022) ("doubt[ing]" that petitioner "could establish a constitutional violation from the ALJ removal restrictions"); *Decker Coal Co. v. Pehringer*, 8 F.4th 1123, 1133 (9th Cir. 2021) (upholding the same statutory removal restrictions for administrative law judges in the Department of Labor).

Congress "uniquely possesses" the power to assign certain actions to agency adjudication). And Genovese's Seventh Amendment right to a jury trial is not implicated because the Commission has not sought civil penalties against him. *Cf. id.* at 454 (explaining that the right to a jury trial attaches when the Commission seeks civil penalties).

VI. Conclusion

For the foregoing reasons, the Division respectfully requests that its motion for summary disposition against Genovese be granted, and that Genovese be permanently barred from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent or NRSRO.

Dated: March 22, 2024
New York, New York

[redacted]

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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 together with the Declaration of Alexander Vasilescu, dated March 22, 2024 with attached exhibits 1 to 10, was served on the following persons on March 22, 2024, and otherwise sent by the method indicated:

By UPS:
CERTIFIED MAIL
Nicholas J. Genovese, #17079-104
[redacted]

Alexander Vasilescu,
Counsel for Division of Enforcement

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19733

In the Matter of

NICHOLAS J. GENOVESE,

Respondent.

DECLARATION OF ALEXANDER VASILESCU
IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION

I, Alexander Vasilescu, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am employed as Regional Trial Counsel in the Division of Enforcement ("Division"), the Petitioner in this action. I have been employed in the Commission's New York Regional Office since 1995. I make this Declaration in support of the Division's Motion for Summary Disposition Against Respondent Nicholas J. Genovese and Memorandum of Law in Support.

2. Attached are true and authentic copies of the following documents attached hereto as exhibits in support of the summary disposition motion:

Exhibit	Description
1	Criminal Judgment for Nicholas J. Genovese filed February 12, 2020, in USA v. Nicholas J. Genovese, 18-cr-00183 in SDNY.
1B	Criminal Complaint against Nicholas J. Genovese in USA v. Nicholas J. Genovese (SDNY) sworn to on February 1, 2018, before Magistrate Judge Kevin N. Fox.
1C	Criminal Indictment for Nicholas J. Genovese filed March 1, 2018, in USA v. Nicholas J. Genovese, 18-cr-00183 in SDNY.
2	Transcript of guilty plea by Nicholas J. Genovese on October 19, 2018,

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Exhibit	Description
	before Judge William H. Pauley III in USA v. Nicholas J. Genovese, 18-cr-00183 in SDNY.
3	Transcript of Sentencing Hearing for Nicholas J. Genovese on February 11, 2020, before Judge William H. Pauley III in USA v. Nicholas J. Genovese, 18-cr-00183 in SDNY.
4	Summary Judgment decision in SEC v. Nicholas J. Genovese, 18-cv-942 (SDNY) dated August 6, 2021. (553 F.Supp.3d 24 (S.D.N.Y. 2021)).
5	Final Judgment against Nicholas J. Genovese, Willow Creek Investments, LP, and Willow Creek Advisers, LLC, filed August 4, 2021, in SEC v. Nicholas J. Genovese, 18-cv-942 (SDNY).
6	Complaint against Nicholas J. Genovese, Willow Creek Investments, LP, and Willow Creek Advisers, LLC, dated February 2, 2018, in SEC v. Nicholas J. Genovese, 18-cv-942 (SDNY).
7	Order of Restitution for Nicholas J. Genovese, filed April 20, 2020, in USA v. Nicholas J. Genovese, 18-cr-00183 in SDNY.
8	Memorandum and Order, dated July 15, 2020, in USA v. Nicholas J. Genovese, 18-cr-00183 in SDNY.
9	Production cover letter to Genovese from the Division dated June 2, 2020
10	Production cover letter to Genovese from the Division dated July 21, 2020

3. There is no merit to Genovese's claim in his answer that the Division did not fulfill its discovery obligation under Rule 230. After filing the OIP in March 2020, the Division produced all non-privileged documents in this case to Genovese in electronic form, first on a thumbdrive and then, at the request of Genovese, on a DVD. The electronic production was Bates-stamped SEC-LIT-EPROD-000000001 to SEC-LIT-EPROD-000007067. Altogether, 7,068 pages of documents were produced to Genovese. The Division produced all documents in its possession required by Rule 230 of Rules of Practice. Among other things, the Division produced all financial and non-financial documents produced pursuant to subpoena relating to Genovese and his entities, and communications with, and documents produced by, Genovese's victims/clients. As the investigation leading to the enforcement action was expedited and led to an emergency action filed in parallel to the criminal case, there was no investigative testimony taken and thus no transcripts produced. The following are the categories of documents produced

to Genovese:

- Bank records from JP Morgan Chase, Capital One, and TD Bank;
- Brokerage records from TD Ameritrade;
- Productions from Geoffrey A. Orley, Gar Wood Custom Boats, and the Hacker Boat Company;
- SEC correspondence with Nicholas J. Genovese;
- SEC Temporary Restraining Order, Civil Complaint and other litigation documents;
- SEC proof of service documents / process server documents; and
- Documents related to U.S.A. v. Nicholas Joseph Genovese.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge.

Dated: New York, New York
March 22, 2024

By: /s/ Alexander Vasilescu
Alexander Vasilescu