

**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 LIST OF WITHHELD DOCUMENTS**

Pursuant to Rule 230(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.230(c), the Division of Enforcement provides this log of documents that have been withheld from the Division's production on the grounds of privilege or the attorney work product doctrine.

**I.     Introduction**

On March 24, 2020, the Commission instituted this follow-on administrative proceeding under Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Respondent Nicholas J. Genovese ("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 ("Division"). 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 a response from Genovese. IA Release No. 6289. On July 27, 2023, the Commission issued a renewed order directing a 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 Division's allegations ("Genovese Answer"). On February 5, 2024, the Commission issued an order regarding the 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 in the SEC enforcement case in federal court, including the \$1 million civil penalty, but otherwise denied the claims in the OIP stating 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, and subsequent papers filed with the Commission, 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. On November 1, 2024, the Commission issued an order finding that Respondent had acknowledged receiving from the Division a "DVD containing more than 7,000 pages of documents that spanned seven categories." Commission Order, Dated November 1, 2024 (IA Release No. 6762) ("November 1 Order") at 2. Contained on the DVD, the Division produced to Respondent, "among other types of documents, bank and brokerage records, communications with and documents produced by Genovese's 'victims/clients', correspondence with Genovese, and documents from the federal civil and criminal cases against Genovese." November 1 Order at 2. The November 1 Order directed the Division to file by December 16, 2024, a privilege log of withheld documents pursuant to Rule of Practice 230.

The documents that have been withheld from production on the grounds of privilege or attorney work product are described below. Pursuant to Rule 230(c), the Division identifies below “categories of documents withheld.”

**II. Categories of Documents Withheld as Privileged and/or Attorney Work Product**

**A. Staff notes, memos and compilations**

The Division’s files contain attorney work product consisting of, for example, notes, witness outlines and memoranda that were prepared during the Investigation and therefore constitute material that was prepared in anticipation of litigation. These files include notes and annotations constituting the staff’s analyses or discussion of documents, witnesses, and third parties; mental impressions of communications with third parties; legal research; legal and factual analyses; memoranda and drafts of memoranda; and draft correspondence. All of these documents were prepared by, at the request of, or under the direction of Division attorneys.

The Division’s files contain publicly available documents that the staff obtained during the Investigation and that have been compiled, marked, or arranged in a manner that reflects the staff’s thoughts, mental impressions and analyses. (Note, versions of publicly available documents that have not been compiled, marked, or arranged in a manner that reflects the staff’s thoughts, mental impressions and analyses have been previously produced to the Respondent).

The Division’s files contain additional working copies of documents the Division has already produced to Respondent as described in Section I hereof, that have been compiled, marked or arranged in a manner that reflects the staff’s thoughts, mental impressions and analyses.

Pursuant to Rule 230(b), the documents in these categories are withheld from production on the grounds of attorney work product privilege, attorney-client privilege, the deliberative process privilege, the investigative files privilege and/or the law enforcement privilege.

**B. Documents related to internal processes of the Commission**

Division investigative staff generated and forwarded to other Commission personnel various internal administrative documents relating to the Investigation; and created or updated internal databases that track the progress of investigations.

As a result of the investigative staff's communications with the Commission and the staff of the Commission's Washington, D.C., office during the course of the Investigation, there may be documents generated and retained at the Washington, D.C., office related to the Investigation.

The investigative staff generated, transmitted, and received e-mails between or among members of the Commission or its staff during the Investigation.

The memoranda that the investigative staff prepared include memoranda to the Commission reflecting the Division's factual and legal analyses and recommendations. There were also communications by e-mail with staff in the Commission's Washington, D.C., office concerning such memoranda.

The staff generated drafts of the OIP filed in this action, settlement documents, and related documents concerning the filing of the OIP, as well as drafts of litigation documents filed in the related federal court case against Nicholas J. Genovese.

Pursuant to Rule 230(b), the above categories of documents have been withheld from production on the grounds of attorney work product privilege, attorney-client

privilege, the deliberative process privilege, the investigative files privilege and/or the law enforcement privilege.

**C.     Documents reflecting the staff's mental impressions and analyses of witness interviews**

During the Investigation, Division attorneys, and other staff acting at an attorney's direction, prepared memoranda and emails concerning witness interviews that reflect their thoughts, opinions and mental impressions.

Pursuant to Rule 230(b), these memoranda and emails have been withheld from production on grounds of attorney work product privilege, the law enforcement privilege, the common interest privilege, the investigative files privilege, and/or the deliberative process privilege.

**D.     Other documents**

Documents constituting electronic mail, fax and other communications or shared attorney work product between and among the NYRO staff and the United States Attorney's Office for the Southern District of New York in connection with the Investigation are withheld pursuant to Rule 230(b) on grounds of attorney work product

privilege, the common interest privilege, the investigative files privilege and law enforcement privilege.

Dated: December 11, 2024  
New York, New York

Respectfully submitted,

DIVISION OF ENFORCEMENT

By: /s/ Alexander Vasilescu  
Alexander Vasilescu – (212) 336-0178

SECURITIES AND EXCHANGE  
COMMISSION  
New York Regional Office  
100 Pearl Street, Suite 20-100  
New York, New York 10004-2616

cc:  
CERTIFIED MAIL  
Nicholas Genovese  
