UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20927

In the Matter of **George McKown,** **Respondent.**	**DIVISION OF ENFORCEMENT'S SUPPLEMENTAL BRIEF AND EVIDENCE IN SUPPORT OF ITS MOTION FOR ENTRY OF ORDER OF DEFAULT AND REMEDIAL SANCTIONS**

The Division of Enforcement (the "Division"), by and through its undersigned counsel, respectfully submits this Supplemental Brief and Evidence in Support of its Motion for Entry of Order of Default and Remedial Sanctions against Respondent George McKown ("McKown"), as directed by the Commission's Order Requesting Additional Briefing and Materials from the Parties, dated April 10, 2024 (the "Briefing and Materials Order").

I. Procedural Background

The Division filed its Motion for Entry of Order of Default and Remedial Sanctions in this case on January 31, 2024. On April 10, 2024, the Commission entered the Briefing and Materials Order, in which it noted that after reviewing the Division's Motion and the exhibits thereto, it did not appear that the record contained sufficient evidence to permit the Commission to determine

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what, if any, misconduct McKown engaged in after July 21, 2010, the date on which the Dodd-Frank Act became effective. Accordingly, the Commission ordered the Division to submit any additional evidentiary materials relevant to its motion and a supplemental brief explaining the relevance of those materials to its request for relief. The additional evidentiary materials requested by the Commission are attached hereto as Exhibit A. The relevance of those materials is set forth in detail below.

II. McKown Engaged in Misconduct that Occurred After July 21, 2010[1]

The transcripts from McKown's criminal trial demonstrate that he engaged in misconduct that occurred after July 21, 2010, the effective date of the Dodd-Frank Act. For example, after the effective date of the Dodd-Frank Act, McKown solicited at least one investor to invest in securities issued by Asset Preservation Specialists ("APS"), the entity owned and operated by McKown and another individual that was at the heart of the fraudulent scheme of which McKown was convicted. That investor, Patricia Middleton, testified that she met with McKown in or about February of 2011 to discuss investing life insurance proceeds she received after her husband died. (*See* Supplemental Excerpts from Trial Transcripts, p. 690, lines 1-5, attached hereto as Exhibit A.) Middleton testified that she discussed with McKown the idea of investing the insurance proceeds to replace the loss of her husband's income. *Id.* at lines 15-18.

During that February 2011 meeting, McKown suggested that Middleton invest in APS and Vantage Advisors – a registered investment adviser owned by McKown that employed him as its CEO from 2010 through 2021. *Id.* at p. 690, lines 20-25; *see also* OIP ¶ II.A. Middleton asked

[1] This Supplemental Brief assumes familiarity with its Motion for Entry of Order of Default and Remedial Sanctions (the "Motion"), filed January 31, 2024, including the evidentiary exhibits submitted therewith. The Division incorporates the evidence and arguments made in its Motion by reference as if fully set forth herein.

McKown whether he would want his own wife involved in those two investments if he were to pass away and he answered in the affirmative. *Id*. at p. 691, lines 8-12. Middleton decided to invest in APS because she trusted McKown. *Id.* at p. 691, lines 19-23. On March 25, 2011, Middleton met with McKown and another individual at her home and on that date she invested $100,000 in APS, an investment she believed, based on McKown's and APS's representations, would pay an 8 percent annual interest rate. *Id.* at 692, lines 8-25, 693, lines 1-17. Middleton testified that she also invested $150,000 into Vantage Advisors, *Id.* at 699, lines 1-2.

On August 8, 2011, Middleton sent McKown an email seeking to take $50,000 out of her investment in APS as well as the interest that had accrued on the entire $100,000 as of the date of the withdrawal she was requesting. *Id*. at 560, lines 13-25; 561, lines 1-23; 697, lines 8-15. Middleton testified that she wanted to take $50,000 out of her APS investment because she was "looking at building a residence in Florida" and because she was "a little bit concerned" that she was not receiving interest payments on her investment in cash; instead, the statements she received reflected that interest was accruing on the principal. *Id.* at 697, lines 8-21. McKown replied that he thought her email would suffice as the written withdrawal request required by her note with APS. *Id.* at 698, lines 2-4.

McKown failed to mention to Middleton at the time she made her investment in APS in March of 2011, and when she sought to take $50,000 out of that investment in August of 2011, that APS had already lost significant sums of its investors' money. Indeed, on cross examination, McKown conceded that he was aware by March of 2011 that APS had lost $350,000 of its investors' money investing in a company called Praxiant[2] and another $250,000 in a failed effort to

[2] Praxiant was a company started by McKown. Despite having no background in software or medicine, McKown's plan for Praxiant was to produce medical software. Praxiant was funded by a $360,000 loan from APS in 2010, which funds came from APS's investors. The loan was never memorialized in any

acquire a broker-dealer. *Id.* at 913, lines 9-11; 914, lines 4-9. And on August 8, 2011, APS's bank account had a balance of only $8,700. *Id* at 562, lines 2-4.

On August 25, 2011, McKown sent Middleton another email, which stated that he was having a hard time coming up with $50,000 to meet Middleton's withdrawal request. He also remarked that he was "not sure why you would choose to take the money out of this 'sure thing' rather than take it out of Vantage Advisors." *Id*. at 698, lines 8-21. Middleton understood McKown's reference to a "sure thing" to refer to her APS note. *Id.*

On December 11, 2011, Middleton sent McKown and his partner another email seeking to liquidate the entire $100,000 she had invested in her note with APS because she was concerned about the investment and because she still needed the money "for the decision she was making on the [Florida] house." *Id.* at 699, lines 11-24.

McKown sent Middleton an email on February 10, 2012 in which he tried to talk Middleton out of liquidating her APS note. McKown urged Middleton to be patient and assured her that

> everything is being dealt with in a very systematic fashion and as long as folks like yourself don't make 'a run on the bank' you will get your funds as soon as possible. You may very well decide you are glad to be earning the 8 percent and want to leave it alone. After all, you are getting your interest on the first of each month and will continue to do so as that is a planned distribution. On the other hand, if you need the money, I encourage you to let me know and we can take it out of the vantage Advisors account, which, by the way, is doing quite well with a fraction of the market risk. Nothing has changed in that we are here and have been for our entire lives. We have your best interests at heart.

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document. Shortly after receiving the loan proceeds from APS, McKown decided to risk most of the money – $300,000 – on a single investment in an entity called Mobilis Motor Sports, which had nothing to do with either medicine or software. McKown testified that he made the Mobilis investment on the understanding that Mobilis would return double the amount invested back to Praxiant in 60 to 90 days. But that investment did not pan out and McKown lost the entire $300,000 investment in Mobilis which, according to McKown, "basically kneecapped Praxiant." Ex. A at 883, lines 18-25, 884-889, 890, lines 1-12.

Id. at 701, lines 2-6, 16-25; 702, lines 1-7. In response, Middleton reiterated her request to liquidate the entire $100,000 APS note, noting in her testimony that she had become very concerned about being able to get her money back. *Id* at 702, lines 8-17.

By September of 2012, Middleton had still not received the money she requested from her APS note. She sent an additional email on September 26, 2012 to McKown's partner, copying McKown. In that email she advised the two men that she had "no other funds to use for these closings. As you know, I requested my money a year ago. You have told me in several recent conversations that you felt the money would be available in November. Praise god that my closing has been moved back to mid-November. Please keep me posted on your progress." *Id*. at 705, lines 18-25; 706, lines 1-9. But by October 2, 2012, she still had not received her principal, leaving her feeling deceived by McKown. *Id* at 706, lines 10-14.

Argument

A. McKown Should be Barred

As the Division argued in its Motion, this case meets all the requirements for the imposition of remedial sanctions against McKown. Barring McKown from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent or NRSRO would serve the public interest and protect investors.

1. Section 203(f) of the Advisers Act

Under Section 203(f) of the Advisers Act, the Commission may impose remedial sanctions on a person associated with an investment adviser, consistent with the public interest, if the associated person has been convicted of, among other enumerated offenses: (1) any felony or misdemeanor that involves the purchase or sale of any security or conspiracy to commit any such offense; or (2) any felony or misdemeanor that is punishable by imprisonment for 1 or more years.

See 15 U.S.C. § 80b-3(e) and (f). In this case, McKown was associated with an investment adviser during the period in which the misconduct described above occurred. OIP ¶ II.A. The misconduct described above was part of the basis for McKown's convictions on charges of conspiracy to commit securities fraud and wire fraud, both of which involved the purchase or sale of a security and both of which are punishable by imprisonment for 1 or more years. OIP ¶ II.B.1-2. And, as explained below, imposing an industry bar against McKown would serve the public interest.

2. An Industry Bar Against McKown Serves the Public Interest

In determining whether an administrative remedy is in the public interest, the Commission considers the following factors:

> the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, and the likelihood that the respondent'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) (*quoting SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). The Commission also considers the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and the extent to which the sanction will have a deterrent effect. *See In re Stanley C. Brooks*, S.E.C. Rel. No. 475, 2012 WL 6132660 at *3 (Dec. 11, 2012). A severe sanction is warranted when a respondent's misconduct involved fraud "because opportunities for dishonesty recur constantly in the securities business." *In re Anthony Tyrone Jones, Jr.*, S.E.C. Rel. No. 1088, 2016 WL 7210100 at *3 (Dec. 12, 2016).

In this case, each of the foregoing factors weighs in favor of imposing an industry bar against McKown. The post-Dodd-Frank conduct described above was egregious, repeated, and involved a high degree of scienter. McKown convinced Middleton, a widow looking to replace

her late husband's income, to invest in securities issued by APS at a time when McKown knew that APS had already lost substantial sums of investors' money. McKown failed to advise Middleton about that fact when she made her initial investment and when she sought to pull some money out of that investment to purchase a new home. Even worse, McKown tried to convince Middleton not to liquidate any part of her investment in APS on more than one occasion with false or misleading assurances. In August of 2011, even though he knew that APS had lost substantial sums of investors' money, McKown told Middleton that APS was a "sure thing." And then, in February of 2012, McKown again attempted to convince Middleton to cancel her request to pull funds out of her APS investment, falsely assuring her that "everything is being dealt with in a very systematic fashion and as long as folks like yourself don't make 'a run on the bank' you will get your funds as soon as possible." But Middleton never got her money back.

McKown's post-Dodd-Frank conduct was part of a larger scheme that began before the Dodd-Frank Act became effective and continued past the Act's effective date. McKown's participation in the scheme included convincing numerous investors – including retirees in their 80's – to invest money in securities issued by APS. He then used investor's proceeds – without their knowledge or authorization – to fund other businesses, like Praxiant, to make principal and interest payments to other investors, and to pay for personal expenses. As demonstrated by the order of restitution entered against McKown at sentencing – approximately $5.2 million – the degree of harm to investors was high.[3] McKown has not made any meaningful assurances against future violations or taken any steps in this matter to demonstrate that he recognizes the wrongful nature of his conduct. McKown has spent much of his adult life working in financial services – as a licensed insurance agent and as a person associated with registered investment advisers,

including more than 10 years as the chief executive officer of the registered investment adviser, Vantage Advisors, LLC. As such, any future employment opportunities when he is released from prison are likely to present him with opportunities for additional misconduct.

III. Conclusion

For all of the foregoing reasons, the Division respectfully requests that the Commission enter a default judgment against Respondent George McKown pursuant to Rules 155(a) and 220(f) of the Rules of Practice. The Division also requests that McKown be barred from any position in the securities industry pursuant to Section 203(f) of the Advisers Act.

Respectfully submitted,

/s/ Andrew P. O'Brien
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[3] *See* OIP at ¶ II.B.1.

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I hereby certify that on May 10, 2024, the Division of Enforcement electronically filed its Supplemental Brief and Evidence in Support of its Motion for Entry of Order of Default and Remedial Sanctions in the above-captioned matter. The Division then served that document, together with the attachments thereto, upon George McKown on May 10, 2024, by mailing a copy of the same to:

George McKown
Register No. [redacted]
[redacted]

Respectfully submitted,

/s/ Andrew P. O'Brien
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