UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20928

In the Matter of **Richard Gearhart,** **Respondent.**	**DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AND MEMORANDUM OF LAW IN SUPPORT**

Pursuant to Rule of Practice 250(b), the Division of Enforcement ("Division"), by and through its undersigned counsel, respectfully moves for summary disposition against Respondent Richard Gearhart ("Gearhart"). This is a follow-on proceeding arising from a criminal securities fraud conviction entered against Gearhart in the United States District Court for the Northern District of Indiana in *U.S. v. Gearhart, et al.*, 16-CR-178 (N.D. Ind. 2016). From 2010 – 2019, Gearhart was an indirect owner with a controlling interest in Vantage Advisors, LLC ("Vantage"), a registered investment adviser located in Indianapolis, IN.

Inasmuch as Gearhart entered a guilty plea and a judgment of conviction was entered against him, the sole issue for the Commission's determination is the appropriate sanction against him under Section 230(f) of the Investment Advisers Act of 1940 (the "Advisers Act"). Summary Disposition should be granted and permanent associational bars should be imposed against Gearhart because he was associated with an investment adviser at the time of the misconduct that resulted in his criminal guilty plea and because such bars are in the public interest.

OS Received 10/31/2024

I. Procedural History

Pursuant to Section 203(f) of the Advisers Act, the Commission issued an Order Instituting Administrative Proceedings ("OIP") against Gearhart on July 7, 2022. The Division served Gearhart with the OIP by mailing a copy of that document to Mr. Gearhart, via certified mail, at USP Tucson, U.S. Penitentiary, where he was then incarcerated. On April 25, 2023, the Commission issued an Order Directing Prehearing Conference (Advisers Act. Rel. 6292) in which it noted that, on August 24, 2022, the Office of the Secretary received a letter from Gearhart (the "Gearhart Letter"), dated August 15, 2022, that responded to certain of the allegations in the OIP. *See* Gearhart Letter, attached hereto as Ex. A. The Commission construed the Gearhart Letter as an answer to the OIP and directed the parties to conduct a prehearing conference. *See*, Order Directing Prehearing Conference at ¶2, April 25, 2023 (Advisers Act. Rel. 6292). On October 24, 2022, the Division produced the documents required by Rule of Practice 230 to Gearhart by shipping copies of the file to Gearhart's attention at USP Tucson.

Despite numerous attempts[1], the Division was not able to schedule a prehearing conference with Gearhart until October 9, 2024. On that date, counsel for the Division spoke with staff at the Residential Reentry Management field office in Chicago, Illinois ("RRM-Chicago"), where Gearhart is currently completing his prison sentence. Staff at RRM-Chicago advised the Division that RRM-Chicago would instruct Gearhart to call counsel for the Division on October 22, 2024 at 3:00 P.M. to conduct the prehearing conference. Gearhart failed to contact counsel for the Division at the time scheduled for the prehearing conference. Accordingly, as stated in its Fifth Statement Concerning Prehearing Conference, the Division respectfully submits this Motion for

[1] *See, generally*, the Division of Enforcement's Statements on Prehearing Conference.

Summary Disposition and Memorandum of Law in Support.

II. Factual Background

On December 22, 2016, Gearhart and a co-conspirator were indicted and charged with conspiracy to commit securities fraud, 4 counts of securities fraud, and 2 counts of wire fraud. *See*, Indictment, *U.S. v. Gearhart*, 16CR178 (N.D. Ind. Dec. 22, 2016), attached hereto as Ex. B. Ultimately, Gearhart executed a written plea agreement, filed on December 16, 2019, pursuant to which he agreed to enter a plea of guilty to one count of conspiracy to commit securities fraud. *See*, Plea Agreement, *U.S. v. Gearhart*, 16CR178 (N.D. Ind. Dec. 16, 2019), attached hereto as Ex. C. The court referred Gearhart's plea agreement to a Magistrate Judge, who, on December 18, 2019, entered findings and recommended that the court accept Gearhart's guilty plea, find Gearhart to be guilty of conspiracy to commit securities fraud, and impose a sentence. The court accepted the recommendations of the Magistrate Judge and, on July 26, 2021, entered a judgement of guilty against Gearhart and imposed a sentence of 5 years' imprisonment, 3 years' supervised release, and ordered Gearhart to pay restitution in the amount of $5,384,273.97. *See*, Criminal Judgment, *U.S. v. Gearhart*, 16CR178 (N.D. Ind. July 26, 2021), attached hereto as Ex. D.

In his plea agreement, Gearhart admitted his guilt and specifically admitted to the following summary of facts establishing his guilt:

> Between in or about January 2008 and continuing through in or about March 2013, I, along with [a co-conspirator], knowingly and intentionally engaged in a securities fraud scheme in which we obtained over $1.5 million dollars of investor funds from more than 25 victims through false statements, misrepresentations, and omissions of material facts, which resulted in misleading the investors into purchasing these securities through me and [a co-conspirator]. [A co-conspirator] and I, along with others, directed individuals to invest their existing retirement funds – including funds from 401ks, IRAs, and annuities – with me and my company Asset Preservations Specialists, Inc. (APS), a business licensed in the State of Indiana. The scheme involved selling and promoting the sale of securities, in the form of investment contracts and notes, to investors in amounts varying from $10,000 to over $250,000. I told investors to sign documents that

> directed their existing retirement funds or investments be wire-transferred or mailed to Business A located in Las Vegas, Nevada. After identifying myself on investor documents with Business A as directing the IRA of these investors, the investor funds were subsequently wire transferred from Nevada to APS's People's Bank in Munster, Indiana under the account number ending in 0292. I had signatory authority on Account 0292. I acknowledge that the investors were told the following: (1) the investment was safe and secure; (2) the investment would earn 6% or 8% interest annually; (3) upon request, the original investment would be returned with no loss of principal within a specific period; and (4) investors could withdraw funds from the investment upon request. As part of the scheme, we did not tell the investors that their money was being used to fund several businesses or to fund loans to businesses in which I, along with [a co-conspirator], was an officer, owner, or member. Investor money was wire transferred from Account 0292 to these businesses without the knowledge of the investors. Further, I acknowledge that, throughout the conspiracy, investor money was used for my own personal use, [a co-conspirator's] personal use, and to make principal repayments and interest payments to other investors, continuing throughout 2012. I acknowledge the investors may not have invested their money with us if we had disclosed how the funds were actually utilized or that their original investment was not really protected from loss. Some of these investors were elderly and had trusted me or [a co-conspirator] because of long time relationships.

Ex. C at 7-8. For the majority of the time period during which Gearhart admits to having been a part of a conspiracy to commit securities fraud, he was associated with an investment adviser because he was, from 2010 through 2019, an indirect owner with a controlling interest in Vantage Advisors, LLC, a registered investment adviser located in Indianapolis, Indiana.[2] *See* Ex. A.

III. 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 per Rule 230, a party may move for summary disposition of any or all allegations contained in the OIP. 17 C.F.R. § 201.250(b). A motion for summary disposition may be granted

[2] In the Gearhart Letter, Gearhart claims that he was not ever involved with the day-to-day operations of Vantage Advisors, LLC but admits that he was a 51% owner of that entity. In addition, Gearhart claims that promissory notes issued by APS "were never thought of as securities" and that a law firm advised him that the notes were "definitely not" securities but he fails to mention that he admitted that the APS notes were securities in his plea agreement.

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.*

Use of the summary disposition procedure has been repeatedly upheld in cases such as this one, 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 SEC LEXIS 236 at *19-22 and footnotes 21-23 (Feb. 4, 2008) (collecting cases). The circumstances in which summary disposition in a follow-on proceeding involving fraud "may not be appropriate…will be rare." *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 SEC LEXIS 3855 at *15 (Dec. 13, 2012) (citations omitted).

IV. There is No Genuine Issue of Material Fact Preventing Summary Disposition Against Gearhart

Section 203(f) of the Advisers Act directs the Commission to censure, place limitations on, suspend, or bar a person a from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization ("NRSRO") if the Commission finds, after notice and an opportunity for a hearing, that such a sanction is in the public interest and that such person, within ten years of the commencement of proceedings initiated under Section 203(f), has been convicted of any offense specified in Section 203(e) of the Advisers Act.

In this case, the OIP alleges that, from 2010 through 2019, Gearhart was associated with an investment adviser because he was an indirect owner with a controlling interest in Vantage, which was a registered investment adviser. OIP at II.A. In the letter that the Commission has construed as an answer to the OIP, Gearhart admits that he was a 51% owner of Vantage. *See* Ex. A.

The OIP further alleges that, in a written plea agreement dated December 16, 2019, Gearhart pleaded guilty to one count of conspiracy to commit securities fraud in violation of 18 U.S.C. § 371 and that the court found Gearhart guilty of that offense. OIP at II.B.1. In the plea agreement, Gearhart admits that the conspiracy spanned the time period January 2008 – March 2013, which time period overlaps with the time period during which Gearhart was associated with an investment adviser. Ex. C at 7. The criminal count of which Gearhart was convicted – conspiracy to commit securities fraud – is one that is specified in Section 203(e)(2) of the Advisers Act inasmuch as it is a felony involving the purchase or sale of a security or a conspiracy to commit such a felony. Gearhart's conviction on July 26, 2021 occurred within ten years of the initiation of this proceeding on July 7, 2022. Accordingly, there is no genuine issue of material fact as to Gearhart's association with an investment adviser and his conviction, within ten years of the initiation of this proceeding, of an offense specified in Section 203(e)(2) of the Advisers Act. As such, the only remaining issue for the Commission to determine is the appropriate sanction against Gearhart under Section 203(f) of the Advisers Act.

V. Gearhart Should be Barred from the Securities Industry.

The public interest requires that Gearhart be 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 SEC LEXIS 3924 at *23 (Dec. 12, 2013) (internal quotation marks omitted), *pet. Denied*, 773 F.3d 89 (D.C. Cir. 2014). *See also*, *Gary M. Kornman*, Exchange Act. Rel. No. 59403, 2009 SEC LEXIS 367 (Feb. 13, 2009) (finding that a criminal conviction justifies a collateral bar under both Advisers Act Section 203(f) and Section 15(b) of the Securities Exchange Act of 1934). Similarly, a "plea agreement and criminal conviction are substantial evidence supporting the SEC's conclusion that it is in the public interest to permanently bar" a respondent. *Michael C. Pattison, CPA*, Exchange Act Rel. No. 67900, 2012 SEC LEXIS 2973 at *25 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 SEC LEXIS 367 at *23.

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.

Gary M. Kornman, 2009 SEC LEXIS 367 at *23 (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 SEC LEXIS 367 at *23. In addition to the *Steadman* factors, 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 Marshall E. Melton*, Advisers Act Rel. No. 2151, 56 S.E.C. 695, 698 (July 25, 2003) and *Schield Mgmt. Co.*, Exchange Act Rel No. 53201, 2006 SEC LEXIS 195, *23 (Jan. 31, 2006). "Fidelity to the public interest requires a severe sanction when a respondent's misconduct involves fraud because the securities business is one in which opportunities for dishonesty recur constantly." *Toby G. Scammell*, Advisers Act Rel No. 3961, 2014 SEC LEXIS 4193 at *23 (Oct. 29, 2014).

In this case, the imposition of a full collateral bar against Gearhart is in the public interest. Gearhart pleaded guilty to conspiracy to commit securities fraud and admitted to intentionally misleading investors into purchasing securities they may not have purchased had they known the truth. All of the *Steadman* factors, as well as other considerations, strongly favor the imposition of a full collateral bar to protect the public from further fraudulent activity.

First, Gearhart's misconduct was egregious. In his plea agreement, Gearhart specifically admits to having lied to investors – some of whom were elderly and trusted Gearhart based on long relationships with him – about the safety of their investments and the uses to which he intended to put their funds. He further admits that his lies convinced investors to sell retirement investments so that they could purchase securities from Gearhart. Worse, he falsely promised investors that their principal would be protected from loss. But throughout the conspiracy, instead of protecting investors' principal, Gearhart admits to having misappropriated investor monies for his own personal use and also to using investor monies to make Ponzi-like payments to other investors. Ex. C at 7-8. As a result of Gearhart's fraudulent conduct, investors lost a substantial amount as indicated by the restitution order of more than $5.3 million imposed against Gearhart. Ex. D at 6. At Gearhart's sentencing hearing, the court acknowledged the egregiousness of Gearhart's conduct, referring to the case as "an abomination" and, describing the impact that Gearhart's misconduct had on his investor victims, stating, "It just takes my breath away. It is just so awful

what you have done to these people. I hardly known [sic] what to say." Transcript of Sentencing Hearing Before The Honorable Philip P. Simon at p. 33-34, *U.S. v. Gearhart*, 16-CR-178 (N.D. Ind. July 13, 2021), attached hereto as Ex. E.

Gearhart's conduct was not isolated. He admits that the conspiracy to which he pleaded guilty lasted at least 5 years and affected more than 25 investors. Ex. C at 7-8.

Gearhart's level of scienter was very high. He admits to having knowingly and intentionally made false statements, misrepresentations, and omissions of material facts to entice investors into purchasing securities they may not have purchased had they known the truth. He went so far as to promise investors that, "upon request, the original investment would be returned with no loss of principal within a specific period." But in reality, Gearhart knew that "their original investment was not really protected from loss." *Id.*

Gearhart has provided no sincere assurances that he would not again commit securities fraud violations nor does he appear to fully acknowledge the wrongful nature of his conduct. To the contrary, in the Gearhart Letter, despite having signed a plea agreement in which he admitted to having "knowingly and intentionally engaged in a securities fraud scheme," Gearhart still attempts to minimize his culpability and evade additional sanctions by referring to purported legal opinion letters, never produced to the Division of Enforcement, assuring him that "our documents were not securities."[3] Ex. A.

The likelihood of recurring misconduct in Gearhart's case is high given his work in the securities industry, the long period over which this fraud took place, and Gearhart's admitted willingness to exploit relationships of trust for personal gain.

[3] Of course, even if Gearhart did, in fact, receive such letters, this follow-on proceeding is not an appropriate forum in which to revisit the factual basis for his criminal conviction. *John W. Lawton*, 2012 SEC LEXIS at *15.

Finally, beyond consideration of the *Steadman* factors, imposing a full collateral bar against Gearhart in this case would serve as a deterrent to others from engaging in similar misconduct. *Schield Mgmt. Co.*, 2006 SEC LEXIS 195 at *23.

VI. Conclusion

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

Respectfully submitted,

/s/ Andrew P. O'Brien
Andrew P. O'Brien
Counsel for Division of Enforcement

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In the Matter of **Richard Gearhart,** **Respondent.**	**CERTIFICATE OF SERVICE**

I hereby certify that on October 31, 2024, the Division of Enforcement electronically filed its Motion for Summary Disposition and Memorandum of Law in Support in the above-captioned matter. The Division then served that document upon Richard Gearhart on October 31, 2024 by mailing a copy of the same to:

Richard Gearhart
[redacted]

Respectfully submitted,

/s/ Andrew P. O'Brien
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Counsel for Division of Enforcement