UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6078 / August 1, 2022

ADMINISTRATIVE PROCEEDING File No. 20941

In the Matter of

DONALD S. LAGUARDIA, JR.,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

The Division of Enforcement ("Division"), pursuant to Rule 250 of the United States Securities and Exchange Commission's Rules of Practice, respectfully moves for summary disposition against Respondent Donald S. LaGuardia, Jr. regarding the claims against him set forth in the Order Instituting Administrative Proceedings in this action (instituted August 1, 2022). In support of this motion, the Division concurrently files a memorandum of points and authorities and related exhibits.

OS Received 09/22/2023

Dated: September 22, 2023

Respectfully submitted,

/s/ Christopher J. Dunnigan

Christopher J. Dunnigan
Division of Enforcement
U.S. Securities and Exchange Commission
New York Regional Office
100 Pearl Street, Suite 20-100
New York, NY 10004-2616
(212) 336-0061
dunnigancj@sec.gov

OS Received 09/22/2023

Certificate of Service

Pursuant to Commission Rule of Practice 150(c)(1) and 150(d)(2), I certify that on May 25, 2023, I filed this document using the eFAP system, and I mailed a copy to the following person at the address listed below by First-Class Mail:

Donald S. LaGuardia, Jr.
c/o Jason Moreau, Esq.
Armstrong Teasdale LLP
800 Boylston Street, 30th Floor
Boston, MA 02199

/s/ Christopher J. Dunnigan

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6078 / August 1, 2022

ADMINISTRATIVE PROCEEDING File No. 20941

In the Matter of

DONALD S. LAGUARDIA, JR.,

Respondent.

DIVISION OF ENFORCEMENT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION

Christopher J. Dunnigan
Division of Enforcement
Securities and Exchange Commission
New York Regional Office
100 Pearl Street, Suite 20-100
New York, NY 10004-2616
dunnigancj@sec.gov

September 22, 2023

OS Received 09/22/2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Regulations

OS Received 09/22/2023

The Division of Enforcement ("Division"), pursuant to Section 250 of the Securities and Exchange Commission's ("Commission") Rules of Practice, 17 C.F.R. § 201.250, moves for summary disposition against Respondent Donald S. LaGuardia, Jr. ("Respondent" or "LaGuardia") regarding the claims against him set forth in the Order Instituting Proceedings in this action (instituted August 1, 2022).[1] The Division requests that, pursuant to Section 206(f) of the Investment Advisers Act of 1940 ("Advisers Act"), LaGuardia be barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical ratings agency.[2]

PRELIMINARY STATEMENT

Summary disposition is appropriate, and the requested relief is warranted, because of the undisputed facts from the related criminal case underlying this follow-on administrative proceeding. In the parallel criminal matter, *U.S. v. LaGuardia*, 19-cr.-00893 (S.D.N.Y.) (LAK) (the "Criminal Case") Respondent was convicted of one count of securities fraud, one count of investment adviser fraud, and one count of wire fraud for fraudulently misappropriating investor funds in the investment funds he managed. This administrative proceeding is predicated on the conviction in the Criminal Case.

I. Statement of Undisputed Facts

A. LaGuardia was Convicted in the Underlying Action.

On December 13, 2019, the United States' Attorney's Office for the Southern District of New York unsealed a sealed indictment against Respondent. (Ex. A, *Indictment*.) The Criminal

[1] All exhibits are included in the contemporaneously filed Exhibits to Division of Enforcement's Memorandum of Points and Authorities In Support of Its Motion for Summary Judgment.

[2] Counsel for Respondent has informed the Division that Respondent does not intend to oppose this motion.

Case went to trial on November 4, 2020, and the jury returned a guilty verdict on all counts. (Ex. B, *Jury Verdict*.) LaGuardia appealed his conviction, and on December 15, 2022, the United States Court of Appeals for the Second Circuit upheld his conviction. (Ex. C, *Second Circuit Opinion*.)

B. The Commission Instituted Administrative Proceedings Against LaGuardia.

Based on the conviction in the Criminal Case, the Commission issued an Order Instituting Proceedings pursuant to Section 203(f) of the Advisers Act on August 1, 2022 to determine whether the allegations against LaGuardia are true, afford him an opportunity to respond, and determine what, if any remedial action is appropriate and in the public interest. (Ex. D., *Order Instituting Proceedings*.)

C. Factual Background of the Criminal Case.

LaGuardia, along with two other individuals, founded L-R Managers LLC ("L-R Managers"), an investment adviser not registered with the Commission. (Ex. A, ¶ 1.) L-R Managers was the investment adviser to, *inter alia*, the LR Global Frontier Funds ("the Frontier Funds" or "the Funds"). (Ex. A, ¶ 1.) From at least 2013-2017 LaGuardia, a managing principal of L-R Managers, engaged in a scheme to defraud the Frontier Funds' investors. (Ex. A, ¶ 6.) As part of his efforts to obtain investors for the Frontier Funds, Respondent sent to investors Private Placement Memoranda ("PPMs"). (Ex. A, ¶ 7.) The indictment alleges that, contrary to the Fronter Funds' Private Placement Memoranda and in breach of duties owed to investors in the Frontier Funds, LaGuardia misappropriated a substantial portion of investor funds and assets belonging to the Frontier Funds. (Ex. A, ¶ 3.) The indictment further alleges that the PPMs specify that L-R Managers would receive a management fee between 2.5-3.0% and an incentive allocation of 20% of net appreciation of the underlying assets in the Frontier Funds. (Ex. A, ¶ 8.)

OS Received 09/22/2023

LaGuardia's fraudulent scheme involved: (i) misdirecting funds from investors intended to be invested in the Frontier Funds into his personal accounts, (ii) transferring funds from the Frontier Funds to L-R Managers for unauthorized purposes; and (iii) transferring funds from the Frontier Funds to pay a debt of L-R Managers. (Ex. A, ¶¶ 10 – 17.) LaGuardia sometimes attempted to cover up his action by recording transfers from the Frontier Funds as receivables due to the Frontier Funds or loans from the Frontier Funds. (Ex. A. ¶¶ 16-17.) All of these actions were contrary to the terms of the PPMs. (Ex. A, ¶ 9.)

By at least September 15, 2015, L-R Managers faced substantial financial difficulties. (Ex. A, ¶ 18.) On or about September 1, 2015, a managing principal of L-R Managers emailed LaGuardia, noting "the precarious financial condition" of L-R Managers and stating that "[n]ow that LR is out of money, burdened with debt, and no prospect of immediate funding, I find it morally unacceptable to continue convincing (employees) to stay . . . [e]qually, I find it ethically troubling to accept money into [the Frontier Funds] when we can no longer support our payroll and mission critical services such as Bloomberg." (*Id*.) LaGuardia subsequently brought in a $2 million investment from a new investor and told the investor that L-R Managers would bear the start-up costs of the Frontier Funds until the funds had additional assets under management. (Ex. A., ¶ 19.) This statement was misleading because the Frontier Funds were already paying those costs. (*Id*.)

The Indictment alleges that LaGuardia personally received at least $327,000 as a result of his fraudulent actions. (Ex. A., ¶¶ 14 & 20.)

D. Testimonial Evidence Presented at the Criminal Trial

The testimonial evidence presented at trial in the Criminal Case included the following:

- The testimony of Christopher LaCroix, who subscribed for a $2 million investment in the Funds. LaCroix testified that LaGuardia was the senior person at L-R Managers.

Prior to making an investment in the Funds, he spoke with LaGuardia twice in-person and several times over the phone. LaCroix attempted to redeem his investment in the Funds in June 2017, but received none of his money back. LaCroix testified that before he made his investment, LaGuardia and other representatives of L-R Managers told him in a meeting that the Funds would invest in 40-60 Frontier Market stocks, with a maximum position of 10% of the Funds' assets in any one stock. LaCroix further testified that he was told at the meeting that he would be charged a 1% (and only 1%) management fee by Managers. When he met with LaGuardia and L-R Managers, LaCroix was not told about any of the receivables due to the Funds from L-R Managers. LaCroix received a Private Placement Memorandum from L-R Managers for the Funds. LaCroix received an account statement from L-R Managers stating that his investment in the Funds was valued at $2,183,062 as of December 2016. (Ex. F, pgs. 53, 59 – 61, 67, 81, 76, 99 – 101.)

- Andrew Trilling ("Trilling"), a United States Postal Inspector, testified at the trial in the Criminal Case. Trilling testified that when LaCroix and his spouse made their $2 million investment in the Funds, $89,535.30 went to LaGuardia personally, $156,287.36 went directly to pay L-R Managers' expenses, $6,699.99 went to pay the credit card expenses of LaGuardia's wife, and $8,100.00 went to pay for the rent on an L-R Managers corporate apartment. Trilling further testified that the total management fee for the investment by LaCroix and his spouse should have been $25,038. Two days after $50,00 was invested in 2014 by an investor (Harris), $3,564.58 was transferred from the Funds to L-R Managers. (Ex. G, pgs. 305, 324 – 326.)

- David Harris ("Harris"), an investor in the Funds, testified at the trial in the Criminal Case. Harris testified that he invested $50,000 in the Frontier Funds in 2014 that he understood would be invested in Frontier Market securities. Harris attempted to redeem his investment in 2017 but was unsuccessful. (Ex. G, pgs. 285 – 287.)

- John Schnell ("Schnell"), L-R Managers' Director of Operations, testified at the trial in the Criminal Case. Schnell testified pursuant to a non-prosecution agreement. Schnell testified that (i) the Funds' PPMs dictated how investors funds could be used; (ii) LaGuardia directed him to make certain transfers out of the Funds' accounts; (iii) these transfers were for L-R Managers' operating expenses and for transfers to LaGuardia; (iv) these transfers were not in accordance with the Funds' PPMs; (v) according to the Funds' PPMs, L-R Managers was entitled to a monthly fee, based on the net asset value of the Funds; (vi) L-R Managers was not entitled to any additional fees from the Funds; (vi) in 2015 and 2016, L-R Managers was unable to pay its employees; (vii) in 2015 L-R Managers' corporate credit card was canceled due to nonpayment; (viii) between 2013 and 2016, LaGuardia directed him to make numerous transfers from the Funds' accounts to L-R Managers' bank account; (ix) these transfers were used for L-R Managers' operating expenses and for distributions to LaGuardia and another principal of L-R Managers; (x) LaGuardia personally made distributions from the Funds' accounts to the L-R Managers bank account; (xi) LaGuardia's spouse had an L-R Managers' corporate credit card (which the Funds

OS Received 09/22/2023

paid for), and used it for personal expenses; (xii) LaGuardia did not reimburse L-R Managers for personal expenses he and his wife put on the L-R Managers corporate credit card (which the Funds paid for); (xiii) L-R Managers' regular use of transfers from the Funds' to pay for L-R Mangers' payroll expenses was not in accordance with the Funds' PPMs; (xiv) withdrawals from the Funds' account to pay for L-R Managers real estate expenses was not in accordance with the Funds' PPMs; (xv) Schnell was concerned about the transfers from the Funds' accounts to L-R Managers' bank accounts because investor funds were being used to operate L-R Managers, when the investor funds should instead have been invested in stocks; (xvi) LaGuardia repeatedly stated that L-R Managers would repay the Funds monies owed, when an anchor investor was located; and (xvii) Schnell testified that he asked LaGuardia: "I basically approached him on one occasion, asked him why he was continually using the bank account and the management company to fund personal expenses, **and his reply to me was, I need to live**." (emphasis added) (Ex. F, pgs. 137, 146, 159, 164, 170, 172, 174-175, 186, 224-225.)

- LaGuardia testified in his own defense at the trial in the Criminal Case. LaGuardia testified that the Funds started accepting investments in 2013. LaGuardia further testified that a receivable was set up between L-R Managers and the Funds as a "tracking mechanism" because L-R Managers could not survive forever if it was paying 100% of the underlying expenses. After LaCroix and his spouse invested $2 million in 2015, the total assets under the Funds' management was $4 million. LaGuardia admitted that $4 million in assets under management was not enough for the Funds to pay their own expenses. LaGuardia did not tell LaCroix about the existing receivable, or practices involving the receivable, that existed between L-R Managers and the Funds. Sometimes the Funds' expenses were paid with money from the Funds themselves, even after LaCroix and his spouse invested in the Funds. LaGuardia admitted at trial on cross-examination that the following statement was correct: "the investor money that goes into the Frontier Fund, that's invested into the fund, that's not supposed to be used to fund the expenses and operations of the management . . .?" LaGuardia admitted at trial on cross-examination that he told LaCroix that the Funds would not bear Fund expenses. LaGuardia admitted at trial on cross-examination that Fund money was sometimes used to pay Fund expenses. (Ex. H, pgs. 390, 412, 417-418, 428, 476-77, 480-481.)

E. Underlying Documents Introduced at the Criminal Trial

The evidence presented at trial in the Criminal Case included the following documents[3]:

- an October 28, 2014 promissory note to from L-R Managers (signed by LaGuardia) to Relief Defendant LR Global Master Fund Ltd. in the amount of $201,500. (Ex. I.)

- an October 2014 series of emails between David Harris and LaGuardia, where LaGuardia specifically represents that Harris' $50,000 investment immediately went into purchasing securities, without mentioning any diversion of a portion of the investment. (Ex. J.)

- a December 23, 2014 memorandum from LaGuardia instructing the Funds' Administrator to record the $201,500 promissory note as an asset of the Funds. (Ex. K.)

- a September 1, 2015 email from a L-R Managers employee to, *inter alia*, LaGuardia, stating that L-R Managers was out of funds, in debt, and "[e]qually, I also find it ethically troubling to accept money into the fund when we can no longer support our payroll and mission critical services such as Bloomberg." (Ex. L.)

- a July 10, 2015 email from L-R Managers to LaCroix (copying LaGuardia) attaching the PPM for the Funds, which specifically states that the Funds have an auditor. (Ex. M.)

- a December 2016 account statement L-R Managers sent to LaCroix and his spouse showing a balance of over $2.1 million. (Ex. N.)

- a February 12, 2016 email from an individual to LaGuardia summarizing their prior conversation, where LaGuardia confirmed that the Funds had not been audited, and had never been audited. (Ex. O.)

F. Outcome of the Criminal Trial

LaGuardia was convicted on all three counts at the criminal trial. (Ex. B.) LaGuardia was sentenced to 60 months of incarceration and three years of supervised release. (Ex. P, *Criminal Docket Sheet*.) He was also ordered to pay $4,037.872.46 in restitution. (*Id*.)

[3] At the trial in the Criminal Case, the total number of exhibits and sub-exhibits was approximately 1500. For purposes of brevity, the Division has only referenced the exhibits discussed at length at the trial and which are relevant to this motion.

II. ARGUMENT

A. *Summary Disposition Standard.*

Rule 250 of the Commission's Rules of Practice permits a party, with leave, to move for summary disposition on one or more claims if it can be shown that there is "no genuine issue with regard to any material fact and that the movant is entitled to a summary disposition as a matter of law." Summary disposition is particularly appropriate in a follow-on proceeding where the underlying facts at issue have already been litigated in the criminal proceedings and the sole issue for the Court in this proceeding concerns the appropriate sanction. *See In the Matter of Toby G. Scammell*, Advisers Act Rel. No. 3961, 2014 WL 5493265, at *3 n.17 (Comm. Op. Oct. 29, 2014) ("We have repeatedly upheld the use of summary disposition in circumstances where a respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction"), *vacated in other part*, Advisers Act Rel. No. 5272, 2019 WL 2775920 (July 2, 2019); *see also In the Matter of Peter Siris*, Exchange Act Rel. No. 34-71068, 2013 WL 6528874, at *11, n.68 (Comm. Op. Dec. 12, 2013) ("A 'summary proceeding was appropriate' in a follow-on proceeding when the respondent's criminal case 'disposed of the central issue regarding the nature of his 'alleged misconduct' for administrative enforcement purposes.'"), quoting *Kornman v. SEC*, 592 F.3d 173, 183 (D.C. Cir. 2010).

B. Barring LaGuardia is in the Public Interest.

Section 203(f) of the Advisers Act authorizes the Commission to impose remedial sanctions against a person (1) who at the time of alleged misconduct was associated with a broker or dealer or an investment adviser, (2) who has been convicted of violating the federal securities laws, and (3) against whom the Commission finds that it is in the public interest to impose remedial sanctions. *See* 15 U.S.C. § 80b-3(f). Each of these elements is readily apparent here.

First, LaGuardia was one of two principals of L-R Managers, which was the investment adviser to the Frontier Funds. *See, In the Matter of Anthony J. Benincasa,* Advisers Act Rel. No. 1923, 2001 WL 99813, at *2 (Comm. Op. Feb. 7, 2001) (explaining that "Congress added the definition of 'person associated with an investment adviser' to the Advisers Act in 1970 in order to permit the Commission to proceed directly against individuals," and concluding that "by functioning as an investment adviser in an individual capacity, [the petitioner] will be in a position of control with respect to the investment adviser, and therefore, meets the definition of a 'person associated with an investment adviser'").

Second, LaGuardia was convicted of violating Section 206 of the Advisers Act. (Ex. A., pg. 11, Ex. B, pg. 1.)

Third, it is in the public interest to impose remedial sanctions against LaGuardia, including by barring him from associating with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization in the future. To determine 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 at 1334 n.29 (5th Cir. 1978)). Here, these factors weigh heavily in favor of barring LaGuardia.

It is well established that, "[a]bsent extraordinary mitigating circumstances" a conviction for offenses involving securities fraud necessitates a bar. *See, In the Matter of Eric S.*

Butler, Advisers Act Rel. No. 3262, 2011 WL 3792730 at *4 (Comm. Op. Aug. 26, 2011); *In the Matter of Alberto W. Vilar*, A.P. File No. 3-13345, 2009 WL 1684733, at *2 (Initial Decision, Apr. 17, 2009) (Initial Decision, Apr. 17, 2009) ("'Absent extraordinary mitigating circumstances,' an individual who has been criminally convicted in connection with activities related to the purchase or sale of securities cannot be permitted to remain in the securities industry.") (citations omitted).

LaGuardia's conduct was egregious, and he acted with a high degree of scienter. He directly misappropriated funds from investors that were intended to go into the Frontier Funds, took money from the Frontier Funds in violations of the PPMs to fund L-R Managers, and paid a debt of L-R Managers with investor funds. All of these actions were in violation of the Frontier Funds' PPMs. He further attempted to conceal these actions in the Frontier Funds books and records by mislabeling some of the transactions as receivables owed. Finally, even though at least one version of the Frontier Funds' PPM stated that it had an auditor, LaGuardia gave it to at least one potential investor (who subsequently invested) knowing that the Funds were not audited and did not have an auditor. These actions warrant permanent bars. *See In the Matter of James P. Griffin*, Rel. No. 1160, 2017 WL 3452397 (Initial Decision, Aug. 11, 2017) (imposing permanent bar from association against respondent who was convicted at trial for orchestrating two fraudulent schemes that preyed on investors' altruism, sentenced to 60 months imprisonment, and ordered to pay $2.153 million in restitution); *In the Matter of James S. Tagliaferri*, Advisers Act Rel. No. 4650, 2017 WL 632134 (Comm. Op. Feb. 15, 2017) (imposing permanent bar from association on respondent who was convicted at trial for a scheme to defraud clients, sentenced to six years in prison, and ordered to pay over $2.5 million in forfeiture and $20.9 million in restitution). Finally, Respondent has made no acknowledgement of wrongdoing, nor given any assurances that he will not engage in similar conduct again. *See In the Matter of Richard P. Sandru,* A.P. File No. 3-15268 Rel. No.

OS Received 09/22/2023

3646, 2013 WL 4049928 at *6 (Initial Decision, Aug. 12, 2013) (deeming permanent bar against adviser appropriate in part because "[h]e has offered no assurances against future violations and has not recognized the wrongful nature of his conduct").

III. CONCLUSION

For the reasons set forth above, the Division requests that the Commission grant its motion for summary disposition and impose an industry-wide associational bar as authorized by Advisers Act Section 203(f).

Dated: September 22, 2023

Respectfully submitted,

/s/ Christopher J. Dunnigan

Christopher J. Dunnigan
Division of Enforcement
U.S. Securities and Exchange Commission
New York Regional Office
100 Pearl Street, Suite 20-100
New York, NY 10004-2616
(212) 336-0061
dunnigancj@sec.gov

OS Received 09/22/2023

Certificate of Service

Pursuant to Commission Rule of Practice 150(c)(1) and 150(d)(2), I certify that on May 25, 2023, I filed this document using the eFAP system, and I mailed a copy to the following person at the address listed below by First-Class Mail:

Donald S. LaGuardia, Jr.
c/o Jason Moreau, Esq.
Armstrong Teasdale LLP
800 Boylston Street, 30th Floor
Boston, MA 02199

/s/ Christopher J. Dunnigan