

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21344**

**In the Matter of**

**JOHN CUCINELLA,**

**Respondent.**

**DIVISION OF ENFORCEMENT'S**  
**MOTION FOR DEFAULT JUDGMENT AND**  
**IMPOSITION OF REMEDIAL SANCTIONS**

The Division of Enforcement (“Division”), pursuant to Rules 155(a) and 220(f) of the Commission’s Rules of Practice, respectfully moves for the entry of a default judgment and the imposition of remedial sanctions against Respondent John Cucinella (“Respondent” or “Cucinella”).

For the reasons set forth in the accompanying Memorandum of Law and the Declaration of Olivia Zach in support of this Motion, the Division respectfully moves for an order finding Cucinella in default, censuring Cucinella and permanently barring Cucinella from association with a broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer

agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.

Dated: October 11, 2023

Respectfully Submitted,  
DIVISION OF ENFORCEMENT

*/s/ Olivia Zach*

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**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21344**

**In the Matter of**

**JOHN CUCINELLA,**

**Respondent.**

**MEMORANDUM OF LAW IN SUPPORT**  
**OF THE DIVISION OF ENFORCEMENT'S MOTION**  
**FOR ENTRY OF DEFAULT AND IMPOSITION OF REMEDIAL SANCTIONS**  
**AGAINST RESPONDENT JOHN CUCINELLA**

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October 11, 2023

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## **I. INTRODUCTION**

The Division of Enforcement (“Division”) respectfully moves for an order finding Respondent John Cucinella (“Respondent” or “Cucinella”) in default, and imposing remedial sanctions, pursuant to Commission Rule of Practice 155(a)(2). 17 C.F.R. § 201.155(a)(2). Cucinella has not responded to the Order Instituting Proceedings within the time allowed. In addition, the Commission should determine that the remedies sought are appropriate and in the public interest under Section 15(b)(6) of the Securities Exchange Act of 1934 (the “Exchange Act”) based upon the OIP’s allegations (all of which should be deemed true) and the criminal judgment entered against him based on his plea to securities fraud. These facts warrant an Order censuring Cucinella and permanently barring Cucinella from association with a broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.

## **II. PROCEDURAL HISTORY**

The Commission commenced this proceeding on March 17, 2023, with an Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Notice of Hearing (“OIP”). On May 24, 2023, the OIP was served on Cucinella, and his answer to the OIP was due by June 13, 2023. Declaration of Olivia Zach signed October 11, 2023 (“Zach Decl.”) Exh. E. Cucinella filed no response. On July 27, 2023, the Commission ordered Cucinella to show cause why he should not be deemed in default and why this proceeding should not be determined against him due to his failure to file an answer or otherwise to defend this proceeding. On August 29, 2023, the Commission issued an order stating that it appears its prior order to show cause may not have been served properly on Cucinella and it issued another order to

show cause and extended the deadline by which Cucinella must respond to the order. The Commission served Cucinella at a new address and Cucinella filed no response. Zach Decl. H. Accordingly, the Division submits this Motion for Default Judgment and Imposition of Remedial Sanctions.

### III. STATEMENT OF FACTS

Cucinella is 45 years old. OIP ¶ II.A.1. From in or about March 2015 through at least April 2018, Cucinella acted as an unregistered broker at Mackrow Asset Management Group (“Mackrow”), an entity that he created and operated. OIP ¶ II.A.1; Zach Decl. Exh. A ¶ 5, Exh. B ¶ 2. Through Mackrow, Cucinella defrauded approximately 80 investors and obtained money and property by means of materially false and misleading statements. OIP ¶ II.B.3; Zach Decl. Exh. B ¶ 2, Exh. C (Tr. 19:20-20:4).

On March 21, 2019, Cucinella was charged in a criminal complaint alleging that he had engaged in a scheme to defraud customers and potential customers of Mackrow by falsely representing that investor funds would be used to, among other things, invest in pre-IPO shares of private companies when in reality Cucinella used investor funds for personal expenses. Zach Decl. Exh. A ¶ 17. According to the criminal complaint, in or about and between 2017 and 2018, Cucinella and Mackrow were the subject of cease-and-desist orders issued by the Alabama Securities Commission, Arkansas Securities Commission, Missouri Securities Division, the Securities Commissioner of South Carolina and the Oklahoma Department of Securities for unregistered sale of securities and/or the fraudulent sale of securities.<sup>1</sup> Zach Decl. Exh. A ¶ 6.

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<sup>1</sup> The staff is also aware that, in 2019, Cucinella was the subject of a cease-and-desist order issued by the Michigan Corporations, Securities and Commercial Licensing Bureau for the unregistered sale of securities and the fraudulent sale of securities. Zach Decl. Exh. F. In addition, in 2020, Cucinella and Mackrow executed a Stipulation to Consent Order with the

According to the criminal complaint, Cucinella cold-called individuals unknown to him, often elderly individuals, and solicited investments in companies that Cucinella falsely claimed would go public in the near future and whose stock would subsequently increase substantially in value. Zach Decl. Exh. A ¶¶ 8, 14, 24, 28. Instead, Cucinella transferred substantial amounts of investor funds to three bank accounts he controlled, which were then used to pay personal expenses such as credit card payments and payments to a Mercedes Benz dealer. Zach Decl. Exh. A ¶¶ 33-35.

On August 8, 2019, Cucinella pleaded guilty to one count of securities fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff(a). OIP ¶ II.B.2; Zach Decl. Exh. C (Tr. 18:17-23). The count of the Criminal Information to which Cucinella pleaded guilty alleged, inter alia, that Cucinella defrauded investors and obtained money and property by means of materially false and misleading statements. Zach Decl. Exh. B ¶ 2. In connection with that plea, Cucinella admitted, among other things, that he worked at Mackrow; solicited a number of potential investors across multiple states by cold-calling individuals and selling specific shares in initial public offerings (“IPOs”); obtained investor money through false statements, including that the funds would be invested in IPOs that in fact did not exist; instead, he invested the funds in precious metals; and he charged excessive fees, markups, and commissions that he did not clearly disclose to investors. OIP ¶ II.B.3; Zach Decl. Exh. C (Tr. 19:20-20:16). On October 13, 2021, Cucinella was sentenced to 30 months imprisonment and three years of supervised release, and ordered to pay restitution in the amount of \$989,665.77. OIP ¶ II.B.2; Zach Decl. Exh. D.

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Securities Department of Illinois’s Secretary of State in which Cucinella admitted to the unregistered and fraudulent sale of securities. Zach Decl. Exh. G.



## IV. ARGUMENT

Cucinella has not filed an answer to the Commission's OIP. The Commission should find Cucinella in default and enter judgment accordingly. Further, because of Cucinella's criminal conviction, the Division submits that a censure and a permanent bar from association with a broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock is appropriate.

### A. Entry of Default Judgment is Appropriate

Cucinella received service of the OIP in this matter on May 24, 2023. Zach Decl. Exh. E. In the OIP, Cucinella was directed to file an Answer within twenty days after its service on him. OIP ¶ IV; see also Rules of Practice 160(a) and 220(b), 17 C.F.R. §§ 201.160(a) and 201.220(b).

Rule 220(f) of the Commission's Rules of Practice provides that if a "respondent fails to file an answer . . . within the time provided, such person may be deemed in default pursuant to Rule 155(a)." 17 C.F.R. § 201.220(f). In turn, Commission Rule of Practice 155(a) provides that "[a] party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against the party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails . . . [t]o answer, to respond to a dispositive motion within the time provided, or to otherwise defend the proceeding." 17 C.F.R. § 201.155(a).

### B. Section 15(b)(6) Relief Is Appropriate

Under Exchange Act Section 15(b)(6), the Commission is authorized to censure and bar from association with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent or nationally recognized statistical rating organization or from participating

in an offering of penny stock, any person who, at the time of the alleged misconduct, was associated with a broker or dealer and was convicted of any offense specified in Section 15(b)(4)(B) within ten years of the commencement of the proceedings if such sanction is in the public interest. The predicate offenses in Section 15(b)(4)(B) include, among other things, any crime that involves the purchase or sale of any security, or conspiracy to commit any such offense, that arises out of the conduct of a broker dealer, or that involves the larceny, theft, embezzlement, fraudulent conversion, or misappropriation of funds or securities.

Cucinella acted as an unregistered broker at Mackrow from March 2015 until approximately April 2018. OIP ¶ II.A.1. Despite the inclusion of “Asset Management” in Mackrow’s name, based on the filings in the criminal matter Cucinella’s conduct was consistent with broker-dealer activity. Cucinella was previously associated with approximately 14 different registered broker-dealers from 1995-2015. OIP ¶ II.A.1. In connection with his plea, Cucinella acknowledged that he called individuals unknown to him, solicited investments in specific companies’ stock and charged excessive fees, markups and commissions that he did not clearly disclose to the investors. OIP ¶ II.B.3; Zach Decl. Exh. C (Tr. 18:17-20:16).

Cucinella pleaded guilty to one count of securities fraud. Zach Decl. Exh. C (Tr. 18:17-23), Exh. D. By pleading guilty to this charge, Cucinella admitted that he was involved in a crime that involved the purchase or sale of a security. And Cucinella himself profited from the scheme, as evidenced by the restitution order. Zach Decl. Exh. D. Further, it is in the public interest that Cucinella be barred from association with a broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock.

### **C. Relief Sought is Appropriate and in the Public Interest.**

In considering whether sanctions are in the public interest, and, if so, what sanctions to impose, the Commission typically considers several factors, referred to as the *Steadman* factors. Specifically, the Commission considers the egregiousness of 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. *In the Matter of Eric Butler*, Exchange Act Release No. 65204, 2011 SEC LEXIS 3002, at \*13-14 & n.21 (Aug. 26, 2011) (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)). While the inquiry is a “flexible one, and no one factor is dispositive,” *Id.* at \*14 & n.22 (quoting *In the Matter of David Henry Disraeli*, Exchange Act Release No. 57027, 2007 SEC LEXIS 3015, at \*61 (Dec. 21, 2007), *petition denied*, *Disraeli v. SEC*, 334 F. App'x 334 (D.C. Cir. 2009)), in this proceeding the majority of these factors support the imposition of sanctions.

On the record in this matter, the *Steadman* factors weigh in favor of censuring Cucinella and permanently barring him from association with a broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock. As he admitted by pleading guilty to securities fraud, for at least three years, Cucinella lied to dozens of elderly individuals in an effort to steal their money for his own personal use. OIP ¶ II.B.3; Zach Decl. Exh. C (Tr. 18:17-20:16). Under the banner of Mackrow, an entity he created and operated, Cucinella personally called potential investors and told them that he would invest their money in specific pre-IPO companies, the value of which would rise significantly after the companies went

public. OIP ¶ II.B.3; Zach Decl. Exh. B ¶¶ 2-3, 8-9. Instead, Cucinella used investor funds to pay his credit card and car payments. Id. ¶ 13. Although Cucinella appears to have taken responsibility for his conduct by pleading guilty to the criminal charge against him, Cucinella's conduct was egregious, performed with a high degree of scienter, and as is evident from his guilty plea, this behavior was not an isolated instance but was instead a course of conduct that he repeatedly engaged in for several years. Cucinella has not provided the Commission with any information regarding his current or future planned occupation, including whether he will return to the financial industry in any capacity, to assess the likelihood of his opportunities for future violations.

The undisputed facts and analysis of the *Steadman* factors demonstrates that the public interest weighs heavily in favor of the remedial sanctions sought herein. Cucinella's criminal conviction for securities fraud supports this conclusion. Additionally, the facts that gave rise to Cucinella's conviction establish that censuring and permanently barring Cucinella from association with a broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock is an appropriate remedy and is necessary for the protection of investors.

## **V. Conclusion**

For the reasons set forth above, the Division requests that the Commission find Cucinella in default, censuring Cucinella and permanently barring Cucinella from association with a broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent,

or nationally recognized statistical rating organization and from participating in an offering of penny stock as authorized by Exchange Act Section 15(b)(6).

Dated: New York, New York  
October 11, 2023

Respectfully submitted,

*/s/ Olivia Zach*

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**CERTIFICATE OF SERVICE**

I certify that I caused copies of the foregoing Motion for Entry of Default and Imposition of Remedial Sanctions, and the accompanying Declaration of Olivia Zach, dated October 11, 2023, to be served upon Respondent John Cucinella, by sending the same to Respondent on October 11, 2023 by UPS Overnight to:

John Cucinella



*/s/ Olivia Zach*  
*Counsel for the Division of Enforcement*

**UNITED STATES OF AMERICA**  
**Before the**  
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**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21344**

<p><b>In the Matter of</b></p> <p style="text-align:center"><b>JOHN CUCINELLA,</b></p> <p><b>Respondent.</b></p>
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**DECLARATION OF OLIVIA ZACH IN SUPPORT OF**  
**THE DIVISION OF ENFORCEMENT'S MOTION FOR DEFAULT JUDGMENT**  
**AND IMPOSITION OF REMEDIAL SANCTIONS**

I, Olivia Zach, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am presently employed as Senior Counsel in the Division of Enforcement in the New York Regional Office of the Securities and Exchange Commission (the "Commission"). I submit this declaration in support of the Division of Enforcement's Motion for Default Judgment and Imposition of Remedial Sanctions.
2. Attached hereto as Exhibit A is a true and correct copy of the criminal complaint in *United States v. Cucinella*, 19-cr-00347 (E.D.N.Y. filed Mar. 21, 2019).
3. Attached hereto as Exhibit B is a true and correct copy of the Information in *United States v. Cucinella*, 19-cr-00347 (E.D.N.Y. filed Aug. 8, 2019).
4. Attached hereto as Exhibit C is a true and correct copy of the Transcript of Criminal Cause for Pleading Before the Honorable Steven Tiscione United States Magistrate Judge, dated August 8, 2019, in *United States v. Cucinella*, 19-cr-00347

(E.D.N.Y. filed Sept. 12, 2019). Cucinella pleaded guilty to one count of securities fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff.

5. Attached hereto as Exhibit D is a true and correct copy of the Judgement and Order of Forfeiture for John Cucinella in *United States v. Cucinella*, 19-cr-00347 (E.D.N.Y. filed Dec. 7, 2021). Cucinella was sentenced to 30 months of imprisonment, three years of supervised release, and ordered to pay \$989,665.77 in restitution.

6. Attached hereto as Exhibit E is a true and correct copy of Declaration to Assist with Record of Service, executed by Preethi Krishnamurthy on June 1, 2023.

6. Attached hereto as Exhibit F is a true and correct copy of the Notice and Order to Cease and Desist against John Cucinella issued on January 23, 2019 by State of Michigan Department of Licensing and Regulatory Affairs Corporations, Securities & Commercial Licensing Bureau.

7. Attached hereto as Exhibit G is a true and correct copy of the Consent Order issued against John Cucinella on May 28, 2020 by State of Illinois Secretary of State Securities Department.

8. Attached hereto as Exhibit H is a true and correct copy of the certified mail return receipt dated September 19, 2023, showing service of the Order to Show Cause on John Cucinella at his Brooklyn address. According to the U.S. Postal Service (“USPS”) tracking information (tracking number 70153430000092731836), the USPS delivered the Order to Show Cause on September 5, 2023 at 2:02 p.m.

This Court is respectfully requested to take official notice of the above described documents pursuant to Rule 323 of the Commission’s Rules of Practice, 17 C.F.R. § 201.323.



Executed in New York, New York, on October 11, 2023.

I declare under the penalty of perjury that the foregoing is true and correct.

/s/ Olivia Zach

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Olivia Zach