

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21364

In the Matter of

MARCUS BEAM

Respondent.

DIVISION OF ENFORCEMENT'S
RESPONSE TO RESPONDENT'S MOTION
TO VACATE DEFAULT

The Division of Enforcement hereby responds to the Motion to Vacate Default (“Motion”) filed by Respondent Marcus Beam, and in support thereof, shows the Commission as follows:

I. Background

The Commission initiated this follow-on proceeding against Respondent on April 11, 2023 pursuant to Section 203(f) of the Investment Advisers Act of 1940. This matter arises from Respondent’s guilty plea and criminal conviction on March 16, 2023 in the United States District Court for the Northern District of Illinois.

When Respondent failed to answer the OIP in this matter, the Division moved for default and imposition of sanctions on May 22, 2023 (“Default Motion”). The Division seeks an associational bar against Respondent.

The Commission issued an Order to Show Cause on June 29, 2023 (the “Original Show Cause Order”), giving Respondent until August 14, 2023, to show cause why he should not be deemed to be in default and why this proceeding should not be determined against him. The Original Show Cause Order also required Respondent to (i) explain the reasons for his failure to timely defend this

proceeding; (ii) include a proposed answer to the OIP; and (iii) address the substance of the Division's request for the associational bar.

The Commission then issued a Renewed Show Cause Order on August 24, 2023 (the "Renewed Show Cause Order"), noting that it appeared to the Commission that the Original Show Cause Order was not properly served on Respondent. As a result, the Renewed Show Cause Order gave Respondent until October 10, 2023, to show cause why he should not be deemed to be in default and why this proceeding should not be determined against him. As with the Original Show Cause Order, the Renewed Show Cause Order required Respondent to (i) explain the reasons for his failure to timely defend this proceeding; (ii) include a proposed answer to the OIP; and (iii) address the substance of the Division's request for the associational bar.

The Division then filed a Status Report on October 23, 2023, advising the Commission that Respondent had failed to file the required response to the Renewed Show Cause Order. The Division attached as an exhibit to its report a copy of the Commission's publicly-available docket showing that Respondent had not filed anything as of October 23, 2023.

II. Procedural Matters

The Division was never served with a copy of the Motion, as required by both the Original Show Cause Order and the Renewed Show Cause Order. The first the Division learned that the Motion had been filed was when the undersigned counsel checked the Commission's publicly-available docket on November 8, 2023. Notably, the undersigned counsel has checked the docket weekly since the filing of the Division's Status Report, and as of November 1, 2023, the docket did not reflect the Motion as having been filed. The certificate of service accompanying the Motion is dated September 28, 2023 and indicates it was sent to the Commission's Office of the General Counsel ("OGC"). The Division is unaware of when or if the Motion actually was received by OGC, or when it was forwarded to the Office of the Secretary for publishing on the Commission's publicly-

available docket, as the docket no longer reveals when it was last updated. The Division also notes that it was not served with a copy of the Motion through the Commission's electronic filing system (eFAP).

III. The Motion Should be Denied

Both the Original Show Cause Order and the Renewed Show Cause Order require Respondent to (i) explain the reasons for his failure to timely defend this proceeding; (ii) include a proposed answer to the OIP; and (iii) address the substance of the Division's request for the associational bar.

As the Division noted in the Default Motion, Respondent's answer to the OIP was due on May 19, 2023. In his Motion, Respondent offers no explanation as to why he was unable to file an answer *at or around that time*. He therefore has not complied with the first requirement in the show cause orders. Respondent also has failed to include a proposed answer to the OIP and to address the Division's request for an associational bar, and he has thus not satisfied the second or third requirements in the show cause orders either. *See also* Rule 155(b) of the Commission's Rules of Practice ("A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, *and specify the nature of the proposed defense in the proceeding.*" (emphasis added)).

Moreover, Respondent's upcoming sentencing on December 21, 2023 in the district court action does not change the fact that he already pleaded guilty to the underlying violation. As noted in detail in the Default Motion, a conviction for wire fraud in violation of Title 18, United States Code, Section 1343, is one of the offenses set forth in Section 203(e) of the Advisers Act that triggers the associational bar. *See* 15 U.S.C. §§ 80b-3(e)(2)(D), 80b-3(f).¹ And as part of the plea agreement that Respondent accepted, he admitted to the facts supporting the violation, including, among other

¹ The Advisers Act defines "conviction" as a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed. *See* 15 U.S.C. § 80b-2(a)(6)

things, that (i) he was associated with Chase Private Equity a/k/a New World Capital (“CPE”), a fund that he advised as to the value of securities and as to the advisability of investing in, purchasing, or selling securities; (ii) he advised individual clients as to the value of securities and as to the advisability of investing in, purchasing, or selling securities; and (iii) he devised and participated in a scheme to defraud investors to obtain money and property from those investors by means of materially false and fraudulent pretenses, representations, and promises. *See generally* Default Motion.

The Division has sufficiently demonstrated that it is appropriate and in the public interest to impose an associational bar against Respondent. His sentencing in the district court will not change that, and he has not proffered any substantive basis to show cause why he should not be deemed to be in default and why the Commission should not determine this proceeding against him.

Accordingly, the Division respectfully requests the Commission grant the Division’s Default Motion and impose the requested sanction against Respondent.

Date: November 8, 2023

Respectfully submitted,

By: /s/ Patrick R. Costello
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Counsel for Division of Enforcement

CERTIFICATE OF SERVICE

I certify that on November 8, 2023, I caused to be served the foregoing DIVISION OF ENFORCEMENT'S RESPONSE TO RESPONDENT'S MOTION TO VACATE DEFAULT on Respondent in the manner indicated:

By US Mail:

Mr. Marcus Beam (Inmate Register No. [REDACTED])
MCC Chicago
Metropolitan Correctional Center
71 West Van Buren St.
Chicago, IL 60605

/s/ Patrick R. Costello
Patrick R. Costello