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 REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION AND IMPOSITION OF SANCTIONS AND MEMORANDUM OF LAW IN SUPPORT**

Pursuant to Rule 250(f) of the Commission's Rules of Practice, and the Commission's Order Scheduling Briefs entered on February 29, 2024, the Division of Enforcement respectfully submits this Reply in support of its Motion for Summary Disposition and Imposition of Sanctions ("Motion") against Respondent Marcus Beam ("Beam") to address the arguments raised by Beam in his Response to the Motion ("Response").[1]

As described in further detail below, Beam's Response does not identify any relevant material fact in dispute before the Commission that would make summary disposition inappropriate in this proceeding. Instead, Beam merely seeks to relitigate issues that the district court already disposed of in the underlying criminal case. *See John W. Lawton*, Rel. No. 3513, 2012 WL 6208750, at *5 (Dec. 13, 2012) (finding that it is improper in a follow-on proceeding to revisit the factual basis for or legal challenges to a district court's order, and any such challenge does not create a genuine issue of fact

[1] The Division filed the Motion on January 19, 2024. The Commission's Order Scheduling Briefs allowed Beam until April 19, 2024 to file his Response, and gave the Division ten days after receiving the Response within which to file its Reply. Beam's Response is dated April 18, 2024, but was not received by the Division until May 6, 2024.

before the Commission). At bottom, Beam voluntarily admitted and pleaded guilty to scienter-based fraud and one of the predicate offenses for an associational bar under Section 203(f) of the Advisers Act, and such a bar is in the public interest. The Commission therefore should grant the Motion, enter the bar, and dispose of this proceeding.

I. Factual Background

This proceeding arises from Beam's guilty plea on March 16, 2023 to one count of wire fraud in violation of Title 18, United States Code, Section 1343, and an order accepting the plea and adjudging Beam guilty by the United States District Court for the Northern District of Illinois, in the matter styled as *US v. Beam*, Crim. No. 1:19-cr-00698. The criminal indictment charged Beam with 10 counts of mail and wire fraud stemming from his illegal solicitation and receipt of client funds from no later than March 2015 through at least October 2019 in connection with Chase Private Equity a/k/a New World Capital ("CPE"), a fund that Beam advised as to the value of securities and as to the advisability of investing in, purchasing, or selling securities. During that same time period, Beam also advised individual clients as to the value of securities and as to the advisability of investing in, purchasing, or selling securities.

As detailed at length in the criminal Indictment and Beam's Plea Agreement[2], beginning in or around March of 2015 and continuing through at least October 2019, Beam devised, intended to devise, and participated in a scheme to defraud investors and others and to obtain money and property from those investors by means of materially false and fraudulent pretenses, representations, and promises. (Indictment, at 2.)

[2] The Division attached the Indictment and Plea Agreement as Exhibits 2-3 to the Motion and requested that the Commission take official notice under Rule 323 of the Commission's Rules of Practice of those filings and other filings in the criminal case. The Division now further requests that the Commission take official notice of the district court's judgment imposing Beam's criminal sentence, which the Division attaches hereto as Exhibit 1.

OS Received 05/10/2024

Beam held himself out as an investment adviser and as the chief executive officer, president, manager, and owner of CPE. (*Id.* at 1.) He solicited investors through CPE and represented that their funds would be invested in pre-IPO shares and shares of other public companies, such as Uber and Lyft, as well as precious metals, art, and real estate. (*Id.* at 3.) Those representations were false, however, because Beam never invested the funds as he promised. (*Id.*) Instead, he misappropriated a significant portion of the funds for his own personal benefit. (*Id*.) To conceal the fraud, he produced fictitious account statements to investors, falsely showing the funds had been invested as he promised and falsely showing inflated account balances. (*Id.* at 4.) Beam also falsely told investors that CPE had assets under management of over $95 million and that investors would be able to withdraw their funds at any time. (*Id.* at 3-4.)

Among the investors that Beam solicited were women that he had met through online dating sites, family members, and employees, many of whom lost most, if not all, of their retirement savings entrusting funds to him. (*Id.* at 2-3.) In addition, Beam hired a group of telemarketers in an overseas call center to make cold calls to solicit additional investors. (*Id.* at 4.) In doing so, he caused the telemarketers to fraudulently represent to prospective investors that they would earn profits by investing with CPE. (*Id*.) Beam commingled investors' funds with funds belonging to CPE and then proceeded to use the funds for his own personal expenditures, including, among other things, cash, rent, retail purchases, credit card debt, and auto loans. (*Id.* at 4-5.)

As part of his guilty plea, Beam admitted, among other things, that during the relevant time period, he was associated with CPE (Plea Agreement, at 2); CPE purported to be a fund that he advised as to the value of securities and as to the advisability of investing in, purchasing, or selling securities (*id.)*; he advised individual clients as to the value of securities and as to the advisability

of investing in, purchasing, or selling securities, in return for compensation (*id.)*; he illegally solicited and received funds from individuals in connection with CPE and promised to invest the funds in pre-IPO shares and other securities (*id.* at 3); despite that promise, he instead misappropriated a significant portion of the funds for his own benefit (*id.* at 4-5); he concealed the misappropriation by fabricating periodic account statements and other documents falsely showing the funds had been invested as he represented and that investors were earning returns (*id.* at 3); and that when investors sought to redeem their investments, he failed to return the funds (*id.* at 4).

Beam was sentenced in the criminal case on April 26, 2024, to a term of 63 months in prison, followed by three years of supervised release. (*See* Exhibit 1 attached, at 2-3.) He also was ordered to pay $566,228 in restitution to ten victims of his scheme. (*Id.*, at 7.)

II. Beam's Response to the Motion

In his Response, Beam admits to pleading guilty in the district court action to one count of wire fraud in violation of Title 18, United States Code, Section 1343. He also admits to the predicate facts underlying the guilty plea as summarized above and detailed in the Motion.

Rather than identify any relevant material fact properly in dispute before the Commission, however, Beam instead devotes the remainder of the Response to arguing that the Commission largely should ignore his admissions in his criminal plea because he claims that plea agreements in general are "contracts of adhesion" and that the choice to plead guilty "is not really a choice at all for someone in [his] shoes." (Response, at 2-3.) He also requests that the Commission find that while he did make false and misleading statements, he did so negligently, and according to him, "that is not the same as making false and misleading statements with scienter." (*Id.*, at 3.) Beam then disputes the amount of investor loss, claims that CPE's financial records must be audited, and requests the Commission await his release from federal custody and then grant him an extension for

further proceedings within which to subpoena CPE's financial records and provide an accurate accounting. (*Id.*, at 3-4.)

Despite Beam's views of the nature of a guilty plea, the fact remains that the district court engaged in a careful colloquy with him during that proceeding, including that he *voluntarily chose to plead guilty*, and the district court itself specifically observed:

> I find that you are competent and capable of entering an informed plea, you know the nature of the charges, you know the statutory punishment, you know your rights, you know the consequences of pleading guilty, you've had the assistance of counsel, you understand your plea agreement, there is a sufficient factual basis for your guilty plea, and your guilty plea is a knowing and voluntary plea on your part. I accept your plea, and I will enter a finding of guilt on your plea.

(*See* Motion, at Ex. 4—Plea Hearing Transcript, at 57-58.)

As to Beam's contention with respect to the mental state with which he acted, violations of 18 U.S.C. § 1343 (wire fraud) involve specific intent to commit the offense—not negligence. *See, e.g.*, *United States v. Miller*, 953 F.3d 1095, 1098-99, 1101-03 (9th Cir. 2020) (holding that wire fraud requires specific intent to deceive and cheat); *Saul Daniel Suster*, Exchange Act Release No. 90401, 2020 WL 6680445, at *4 n.26 (Nov. 12, 2020) (collecting cases stating that conspiracy to commit mail and wire fraud requires specific intent to defraud). Beam asks the Commission to ignore that Count One of the Indictment—to which he *voluntarily chose to plead guilty*—specifically charges him with, among other things:

- "*Intend[ing]* to devise…a scheme to defraud investors" "by means of materially false and fraudulent pretenses, representations, and promises;"
- "*Knowingly* ma[king] materially false representations to investors to fraudulently obtain and retain their money, including false representations about the type of investments that would be made and were made for investors, the safety of those investments, and the expected and actual returns on investment;"
- "[Sending] false account statements to investors, and falsely promis[ing] that investors could withdraw all of their funds upon request;"

- "Falsely representing that [investors'] funds would be invested, and were invested, on their behalf;"

- "*Intend[ing]* to and did misappropriate a significant portion of the investors' funds for his own benefit, rather than investing those funds;"

- "*Intend[ing]* to and did misappropriate most of the retirement funds that were invested—and no profits were generated—so that the investors lost the retirement funds they invested and incurred additional costs;"

- "*Kn[owing]* that the investors would not be repaid because [Beam] intended to and did misappropriate a substantial portion of the investors' money;"

- "*Kn[owing]* that the account statements contained false information;"

- "*Kn[owing]* that he was not authorized to use investors' funds for his own benefit;" and

- "*Knowingly* ma[king] false lulling statements to investors concerning repayment of their funds and why they were not being paid back as requested.

(*See* Indictment, at 2-5) (emphasis added). As noted above, the Commission has held that it is inappropriate in a follow-on proceeding to revisit the factual basis for or legal challenges to a district court's order, and any such challenge does not create a genuine issue of fact before the Commission. *See Lawton*, 2012 WL 6208750, at *5.

The same holds true for Beam's last argument with respect to disputing the amount of investor loss and claiming that CPE's financial records need to be audited. The district court already determined the amount of investor loss that Beam is required to pay to his victims, having entered a restitution order against him in the amount of $566,228. (*See* Exhibit 1 attached, at 7.)

III. The Commission Should Enter an Associational Bar

The Commission has "repeatedly upheld the use of summary disposition" where, as here, the respondent has been convicted of an offense listed in Section 203 of the Advisers Act and "the sole determination is the proper sanction, and no material fact is genuinely disputed." *Gary M. Kornman*, Rel. No. 59403, 2009 WL 367635, at *10 (Feb. 13, 2009), *pet. denied,* 592 F.3d 173 (D.C. Cir. 2010)

(collecting cases); *see also Charles Trento*, Rel. No. 8391, 2004 WL 329040, at *2 (Feb. 23, 2004). Under Commission precedent, the circumstances in which summary disposition is inappropriate in a follow-on proceeding involving fraud "will be rare." *Efim Aksanov*, Initial Dec. Rel. No. 1000, 2016 WL 1444454, at *2 (Apr. 12, 2016) (citing *John S. Brownson*, Exchange Act Rel. No. 46161 (July 3, 2002), 55 S.E.C. 1023, 1028 n.12, *pet. denied,* 66 F. App'x 687 (9th Cir. 2003)).

Here, the Commission should bar Beam from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Section 203(f) of the Advisers Act authorizes the Commission to impose such an associational bar on any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated, with an investment adviser, if such a bar is in the public interest and if the person, among others things, has been convicted of violating any offense specified in Section 203(e) of the Advisers Act within ten years of the commencement of proceedings before the Commission. *See* 15 U.S.C. § 80b-3(f); *see also Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *8 (July 26, 2013) (holding that it is "well established that [the Commission is] authorized to sanction an associated person of an unregistered broker-dealer or investment adviser in a follow-on administrative proceeding"). Both of these elements are met here.

A. Beam has been Convicted of the Requisite Violation

As noted above, Beam pleaded guilty on March 16, 2023 to one count of wire fraud in violation of Title 18, United States Code, Section 1343, and the district court entered judgment of guilt against him. A conviction for that offense is one of the offenses set forth in Section 203(e) of the Advisers Act that triggers the associational bar described in Section 203(f) of the Advisers Act.

See 15 U.S.C. §§ 80b-3(e)(2)(D), 80b-3(f).[3] 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).

B. An Associational Bar is in the Public Interest

In assessing the public interest, the Commission considers such factors as: (i) the egregiousness of the respondent's actions; (ii) the isolated or recurrent nature of the infraction; (iii) the degree of scienter involved; (iv) the sincerity of the respondent's assurances against future violations; (v) the respondent's recognition of the wrongful nature of his or her conduct; and (vi) the likelihood the respondent's occupation will present opportunities for future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) (*quoting SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). Additionally, the Commission considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *Marshall E. Melton*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at *5-6 (July 25, 2003).

But the Commission often has emphasized the public interest determination extends beyond consideration of the particular investors affected by the respondent's conduct to the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally. *See Christopher A. Lowry*, 55 S.E.C. 1133, 1145 (2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003); *Arthur*

[3] Section 203(f) also authorizes an associational bar if the conviction results from a crime (i) involving the purchase or sale of a security, the making of a false report, or misappropriation of funds; (ii) arising out of the conduct of the business of an investment adviser; or (iii) punishable in general by imprisonment for one or more years. *See* 15 U.S.C. §§ 80b-3(e)(2)-(3), 80b-3(f). Under any of these iterations, or the violation of Title 18, United States Code, Section 1343 delineated above, the criminal conduct at issue in this proceeding for which Beam was convicted would amount to qualifying conduct sufficient to justify imposition of the associational bar.

OS Received 05/10/2024

Lipper Corp., 46 S.E.C. 78, 100 (1975). Moreover, the public interest requires a strong sanction when the respondent's past misconduct involves fraud because opportunities for dishonesty frequently recur in the securities business. *See Richard C. Spangler, Inc.*, 46 S.E.C. 238, 252 (1976). Here, the factors weigh heavily in favor of an associational bar against Beam.

First, as detailed in the Motion and summarized above, some of Beam's clients have lost most, if not all, of their hard-earned retirement savings by entrusting their funds to him. Among those clients were women Beam had met through online dating sites, family members, and employees. The severity of this loss cannot be overstated, and the district court recognized the magnitude of the loss in assessing restitution against Beam.

Second, Beam acted with a high degree of scienter, falsely aggrandizing himself as an experienced adviser with non-existent funds under management, and then even going so far as to fabricate account statements to conceal the fact he had used client funds for his own personal enjoyment.

Third, Beam's misconduct was not isolated—indeed, it lasted for years and encompassed repeated instances of fraud on numerous clients.

Fourth, Beam has provided no assurances against future violations of the securities laws. *See Aaron v. SEC*, 446 U.S. 680, 701 (1980) (the "degree of intentional wrongdoing evident in a defendant's past conduct" is an "important factor" indicating a risk of future harm); *see also Michael K. Martin*, Exchange Act Release No. 99018, 2023 WL 8254973, at 5-6 (Nov. 24, 2023). Instead, Beam persists, even here before the Commission, to challenge the district court's underlying findings, and even goes so far as to demand the Commission extend this proceeding to allow him to subpoena financial records to dispute the amount of investor loss—an amount the district court already has determined and ordered him to pay in restitution to his victims.

OS Received 05/10/2024

Fifth, although Beam's guilty plea in the district court suggests he may have some appreciation for the wrongfulness of his conduct—despite his likening in the Response of a guilty plea to a "contract of adhesion"—any remorse Beam has shown does not outweigh the evidence that he poses a risk to the investing public. *See*, *e.g.*, *Lawrence Allen DeShetler*, Advisers Act Release No. 5411, 2019 WL 6221492, at *3 (Nov. 21, 2019) ("Although his guilty plea indicates that DeShetler might have some appreciation for the wrongfulness of his conduct, it does not outweigh the evidence that DeShetler poses a risk to the investing public."); *Korem*, 2013 WL 3864511, at *6 (finding that, although respondent acknowledged his wrongdoing by pleading guilty in the underlying criminal case, "the degree of scienter involved in the misconduct at issue . . . cause[s] us concern").

And sixth, it is abundantly clear that Beam no longer can be trusted in the advisory business, even upon his release from incarceration. *See*, *e.g.*, *Anthony Vassallo*, Advisers Act Release No. 6042, 2022 WL 2063310, at *4 (June 6, 2022) (finding respondent likely to commit future violations because he acted as an investment adviser during the period of his misconduct and offered no assurances concerning his plans following incarceration); *see also Martin A. Armstrong*, Advisers Act Release No. 2926, 2009 WL 2972498, at *4 (Sept. 17, 2009) (finding that "there is a likelihood that Armstrong would, after his release from prison, be able and inclined to re-enter the securities industry where he would confront opportunities to violate the law again"); *James E. Franklin*, Exchange Act Release No. 56649, 2007 WL 2974200, at *8 (Oct. 12, 2007) (finding a penny stock bar "necessary to protect the public interest because, absent a bar, there would be no obstacle to [respondent's] participation in a penny stock offering in the future")

The combination of all these factors, coupled with the recency of the offense and the impact on the public-at-large, should lead the Commission to conclude that an associational bar is necessary.

OS Received 05/10/2024

Such a bar "will prevent [Beam] from putting investors at further risk and serve as a deterrent to others from engaging in similar misconduct." *Montford & Co*., Rel. No. 3829, 2014 SEC LEXIS 1529, at *51 (May 2, 2014), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015).

Ultimately, the securities industry "relies on the fairness and integrity of all persons associated with each of the professions covered by the collateral bar to forgo opportunities to defraud and abuse other market participants." *Lawton*, 2012 WL 6208750, at *11. Beam's pattern of blatant misconduct demonstrates that he is incapable of such fairness and integrity. He presents a significant risk to the securities market, and should be sanctioned accordingly. *See Bartko v. SEC*, 845 F.3d 1217, 1220-21 (D.C. Cir. 2017) ("Under Dodd-Frank, then, the Commission is now able to bar a securities market participant from the six listed classes—broker-dealers, investment advisers, municipal securities dealers, transfers agents, municipal advisors and NRSROs—based on misconduct in only one class."); *James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *6 (Feb. 15, 2017) (finding that the misconduct underlying the respondent's conviction demonstrated that respondent was unfit to participate in the securities industry and that his participation in it in any capacity would pose a risk to investors).

VI. Conclusion

For the foregoing reasons, the Division of Enforcement respectfully requests the Commission grant the Division's Motion for Summary Disposition, and impose an associational bar against Beam under Section 203(f) of the Advisers Act.

Date: May 10, 2024

Respectfully submitted,

By: /s/ Patrick R. Costello

Patrick R. Costello
DIVISION OF ENFORCEMENT

Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-5949
Telephone: (202) 551-3982
Email: costellop@sec.gov

Counsel for Division of Enforcement

CERTIFICATE OF SERVICE

I certify that on May 10, 2024, I caused to be served the foregoing DIVISION OF ENFORCEMENT'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION AND IMPOSITION OF SANCTIONS AND MEMORANDUM OF LAW IN SUPPORT on the following persons in the manner indicated:

By US Mail:

Mr. Marcus Beam (Inmate Register No. [redacted])
[redacted]

/s/ Patrick R. Costello
Patrick R. Costello

OS Received 05/10/2024

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21364

In the Matter of **MARCUS BEAM** **Respondent.**	**EXHIBITS TO DIVISION OF ENFORCEMENT'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION AND IMPOSITION OF SANCTIONS**

Exhibit 1

Judgment Imposing Criminal Sentence