UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE
PROCEEDING File No. 3-22250

In the Matter of

CHOICE ADVISORS, LLC
AND MATTHIAS O'MEARA,

Respondents.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

OS Received 01/17/2025

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I. INTRODUCTION

Pursuant to Rule 250(b) of the Securities and Exchange Commission's (the "Commission's" or "SEC's") Rules of Practice, the Division of Enforcement (the "Division") respectfully moves for summary disposition against Respondents Choice Advisors, LLC ("Choice") and Matthias O'Meara and for entry of an order (1) barring O'Meara from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and (2) censuring Choice.

This is a follow-on proceeding arising from a related injunctive action, *SEC v. Choice Advisors, LLC, et al.*, No. 21-cv-01669-JO-MSB (S.D. Cal. Sept. 22, 2021). In the civil injunctive action, the Honorable Jinsook Ohta, United States District Judge for the Southern District of California, granted partial summary judgment for the Commission against Choice, a municipal advisor, and O'Meara, one of Choice's principals, and denied in full Respondents' motion for summary judgment. The Court granted summary judgment on several of the Commission's claims, finding that Choice and O'Meara breached their fiduciary obligations to their charter school clients, in violation of Section 15B(c)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78o-4(a), and Municipal Securities Rulemaking Board ("MSRB") Rule G-42, and that they failed to deal fairly with their clients in violation of MSRB Rule G-17. Additionally, the Court ruled that Choice failed to register as a municipal advisor with the Commission and the MSRB in violation of Section 15B(a)(1)(B) of the Exchange Act, 15 U.S.C. § 78o-4(a)(1)(B), and MSRB Rule A-12.

In its final judgment, the Court permanently enjoined Choice and O'Meara from future violations of these securities laws, noting that permanent injunctions were "appropriate and needful given their past disregard of these same [fiduciary] objections and their continued failure to appreciate the full wrongful nature of their conduct." Amended Order Granting in Part and Denying in Part Plaintiff's Motion for Entry of Final Judgment Including Certain Remedies, *filed*

on October 7, 2024, attached hereto as Exhibit 8 ("Order ISO Final Judgment") at 9.[1] The Court also ordered O'Meara to pay disgorgement plus prejudgment interest in the amount of $179,081 and a civil penalty of $133,491; and ordered Choice to pay disgorgement plus prejudgment interest in the amount of $107,448 and a civil penalty of $79,889.

All facts necessary for summary disposition have been resolved by the Court in the civil injunctive action against Respondents. *See* MSJ Order; Order ISO Final Judgment. These facts, determined by the Court to be undisputed after Choice and O'Meara had a full and fair opportunity to litigate, establish that a permanent industry bar against O'Meara, and a censure of Choice, are justified and in the public interest. The Division's motion for summary disposition therefore should be granted.

II. RESPONDENTS

A. Choice Advisors, LLC is a Texas limited liability company with its primary place of business in Denver, Colorado. It registered as a municipal advisor with the Commission in

[1] Under Rule 323, judicial notice may be taken in this proceeding of "any material fact which might be judicially noticed by a district court of the United States . . . ." 17 C.F.R. § 201.323. The Commission therefore may take notice of its own public official records and of the docket reports, pleadings, court orders, and other filings by the parties in the civil action. Accordingly, the Division respectfully requests judicial notice be taken of the following exhibits to this motion:

- Exhibit 1—Docket Sheet in *SEC v. Choice Advisors, LLC, et al.*, No. 21-cv-01669-JO-MSB (S.D. Cal.);
- Exhibit 2—SEC's Complaint (Docket 1) ("Compl.");
- Exhibit 3—SEC's Memorandum of Points and Authorities in Support of Its Motion for Partial Summary Judgment (Docket 62) (SEC's "Mot. for Summary Judgment");
- Exhibit 4—District Court's Order (1) Granting in Part and Denying in Part Plaintiff's Motion for Partial Summary Judgment; and (2) Denying Defendants' Motion for Partial Summary Judgment (Docket 89) ("MSJ Order");
- Exhibit 5—SEC's Motion for Entry of Final Judgment Imposing Remedial Relief (Docket 90) (SEC's "Mot. for Remedial Relief");
- Exhibit 6—Defendants' Brief in Support of Defendants' Response to Motion for Entry of Final Judgment Imposing Remedies (Docket 96) (Defendants' "Opp. to Mot. for Remedial Relief");
- Exhibit 7—Transcript of [July 17, 2024] Evidentiary Hearing Before the Honorable Jinsook Ohta United States District Court Judge (Docket 101) ("Tr."); and
- Exhibit 8—Order ISO Final Judgment (Docket 105).

August 2018 and with the Municipal Securities Rulemaking Board in October 2018. But starting in May 2018, when not registered with the Commission or MSRB, Choice acted as a municipal advisor, as defined by Section 15B(e)(4) of the Exchange Act, 15 U.S.C. § 78o-4(e)(4), to multiple clients, including the two schools at issue in this proceeding.

B. Matthias O'Meara, 42, resides in Denver, Colorado. He co-founded Choice in May 2018. Presently, O'Meara serves as Choice's sole principal. On November 11, 2024, Choice's co-founder, Paula Permenter,[2] filed a Form MA-I with the Commission, which identified that she has withdrawn from Choice. O'Meara is currently the sole associated person identified for Choice. From June 2014 through May 2018, O'Meara was a registered representative at a broker-dealer registered with the Commission. Starting in May 2018, O'Meara was a municipal advisor and an associated person of Choice, as those terms are defined by Sections 15B(e)(4)(A) and 15B(e)(7) of the Exchange Act, 15 U.S.C. §§ 78o-4(e)(4)(A) and 78o-4(e)(7), and MSRB Rule D-11.

III. STATEMENT OF UNDISPUTED FACTS

A. The Commission's Complaint

On September 22, 2021, the Commission filed its complaint in *SEC v. Choice Advisors, et al.*, No. 21-cv-01669-JO-MSB, alleging, among other misconduct, that Choice and O'Meara engaged in unregistered municipal advisory activities, breached their fiduciary obligations to their clients, operated under an illegal fee-splitting arrangement with an underwriter, and failed to deal fairly with all persons. *See* Docket Sheet, *SEC v. Choice Advisors, LLC*, No. 21-cv-01669-JO-MSB (attached hereto as Exhibit 1); Compl.

The Commission alleged that, in May 2018, O'Meara and Choice's other co-founder, Paula Permenter, left their employment at a municipal underwriting firm to start a new municipal advisory firm, representing charter school clients. Compl. ¶¶ 6, 13, 14, 27. In an

[2] Permenter is not a Respondent to this proceeding, and her violations were separately addressed in a September 23, 2021 Commission enforcement action. *See* Order Instituting Proceedings, *In the Matter of Paula Permenter,* Admin. Proc. File No. 3-20593.

effort to secure Choice's fees even before their underwriting clients were aware of the existence of the new firm, O'Meara (with Permenter) disregarded his fiduciary obligations by negotiating an agreement for Choice to split the fees already committed to the underwriter on each of his and Permenter's clients' transactions, even though such arrangements are outlawed by MSRB Rule G-42. *Id*. ¶ 30. O'Meara created an additional conflict of interest by operating in a dual-capacity, simultaneously acting on behalf of both the underwriter and Choice, in order to set up the fee-splitting arrangement as well as the engagements for both the underwriter and Choice. Compl. ¶¶ 7, 40-54. Moreover, despite repeated advice from counsel to the contrary, Choice and O'Meara chose to provide municipal advisory services to these clients without first registering Choice as a municipal advisor, as required under the federal securities laws, or disclosing Choice's lack of registration and O'Meara's dual roles to their clients. Compl. ¶¶ 4-6, 26, 28, 38, 69.

B. Summary Judgment Against Respondents Choice and O'Meara

After successfully opposing Choice and O'Meara's motion to dismiss, the Commission moved for partial summary judgment on December 1, 2023. In support of its summary judgment motion, the Commission submitted excerpts from the transcripts of O'Meara's and Permenter's investigative testimony; excerpts from the deposition transcripts of O'Meara, an executive director of one of his school clients, and his former legal counsel; as well as e-mails and other documentary evidence. *See* SEC's Mot. for Summary Judgment. In addition to filing an opposition to the Commission's motion, Choice and O'Meara filed a competing motion for partial summary judgment. *See* Exhibit 1 at Docket 65.

The District Court denied Choice and O'Meara's motion in its entirety, and, in the same order, granted partial summary judgment in favor of the Commission on six claims based on the undisputed factual record. MSJ Order at 11, 13, 15, 16, 20, 23, 25. Specifically, the Court found that the undisputed facts established that Choice and O'Meara breached their fiduciary duties to their clients by failing to disclose their unregistered status and O'Meara's simultaneous employment with the underwriting firm and Choice, in violation of Section 15B(c)(1) of the

Exchange Act and MSRB Rule G-42. *Id.* at 20, 23. The Court also ruled that Choice and O'Meara's impermissible fee-splitting arrangement with the underwriting firm violated MSRB Rule G-42. *Id.* at 16. The Court further held that Choice and O'Meara violated MSRB Rule G-17 by failing to deal fairly with their clients. *Id.* at 25. In addition, the Court ruled that Choice and O'Meara unlawfully engaged in unregistered municipal advisory activity, and that Choice failed to register with the Commission and the MSRB in violation of Section 15B(a)(1)(B) of the Exchange Act and MSRB Rule A-12. *Id.* at 11. Additionally, the Court found that Choice and O'Meara's violations of the MSRB rules constituted violations of Section 15B(c)(1) of the Exchange Act's prohibition against engaging in municipal advisory activity in contravention of any MSRB rule. *Id.* at 11.

1. <u>Summary of Facts Found by the Court</u>

a. Failure to Disclose O'Meara's Dual Role as Both the Underwriter and Municipal Advisor

The undisputed evidence shows that O'Meara and Choice engaged a school client, Bella Mente Montessori, and performed both underwriting and advisory work, on behalf of both the underwriter and the municipal advisor on the same transaction. MSJ Order at 20-21. Respondents did not dispute the simultaneous employment. *Id.* at 21. Indeed, the undisputed evidence shows that Respondents took steps that obfuscated their multiple conflicts of interests, including the dual role. Specifically, while still employed at the underwriter, O'Meara sent an engagement letter to Bella Mente Montessori on behalf of the underwriter and, on the same day, sent another one engaging Choice as the municipal advisor. *Id.* at 20-21. In the municipal advisor engagement letter, O'Meara and Choice affirmatively represented to their client that they had no conflicts of interest, stating (1) "Choice Advisors has no known actual or potential material conflicts of interest that might impair its ability either to render unbiased or competent advice or to fulfill its fiduciary duty to Client" and (2) "Choice Advisors is not aware of any other engagement or relationship Choice Advisors has that might impair [its] ability to [sic] either to render unbiased or competent advice or to fulfill its fiduciary duty to [its client]." *Id.* at

21; Order ISO Final Judgment at 5. Accordingly, the Court found that Respondents failed to disclose the conflict of interest arising out of O'Meara's dual role on the transactions, and that Respondents "acted with a culpable degree of scienter" in doing so. MSJ Order at 21; Order ISO Final Judgment at 5.

The Court also articulated its factual bases for determining that the conflict of interest arising out of O'Meara's dual role was material. The withheld information was "critical" to the school's ability to evaluate whether Respondents were truly acting in the school's best interests, or whether "O'Meara was 'serving two masters' when he referred Bella Mente to BB&T for underwriting services." MSJ Order at 22.

b. Unregistered Municipal Advisory Activities and Failure to Disclose Unregistered Status

In briefing and oral argument, Respondents conceded that they had performed unregistered municipal advisory services. MSJ Order at 11, 19. Accordingly, the Court found that the undisputed evidence established that Respondents provided municipal advisory services to two schools, Bella Mente Montessori and Liberty Tree Academy, without first registering Choice as a municipal advisor, and were compensated for these activities. *Id.* at 10-11.

Respondents further admitted that they never disclosed to either school that they were not legally registered, and offered no explanation as to why this fact would not be material to their clients. MSJ Order at 19. By withholding the fact that they were unregistered, Respondents denied their clients the opportunity to "consider[] whether [Respondents] were qualified to render services" or to "explor[e] any possible legal or practical consequences of proceeding with unregistered advisors." *Id.* at 20. The Court found that since registration "bears on municipal advisors' fitness to perform the very work for which they were hired and reasonable clients would have wanted to consider the implications of this information before engaging a professional, [Respondents'] failure to disclose this information constitutes a breach of their fiduciary duties" under Section 15B(c)(1) of the Exchange Act and MSRB Rule G-42. *Id.* at 20.

Respondents' violations relating to their failures to register were conducted with a high

level of awareness, and demonstrated a "disregard for (1) the compliance with regulations intended to protect their client and (2) their obligation to honor the fiduciary duties they owed to their clients." Order ISO Final Judgment at 4 (citing MSJ Order 10-11, 19-23). Respondents "knowingly engaged in municipal advisory services without being properly registered and withheld this important information from their clients." Order ISO Final Judgment at 4 (citing MSJ Order at 9-11, 19-20). Instead, Respondents affirmatively mispresented that they had no conflicts of interest. MSJ Order at 21; Order ISO Final Judgment at 5.

c. Illegal Fee-Splitting Arrangement

The undisputed facts show that Respondents and the underwriter, BB&T, "agreed that, for every school client that [Respondents] brought to BB&T to underwrite a bond offering, BB&T would split a portion of its [underwriting] fee[]" with Respondents. MSJ Order at 12. Respondents did not dispute the facts that, in May 2018, O'Meara and his manager at BB&T formed an "agreement of fee splits, and course of action for prospects and future deals[]" pursuant to which Respondents and BB&T agreed that they would divide the underwriter's two percent fee on transactions they shared. *Id.* at 12-13. The Court further found that, after negotiating this agreement, the BB&T manager "communicated to other bank employees that BB&T expected Choice to refer future school bond business to them: BB&T 'ha[s] already seen transaction volume flow both ways, even after only a few days' and anticipated 'more deal flow coming [their] way from referrals' from [Respondents]." *Id.* at 13.

The Court concluded that Respondents conducted the fee-splitting with scienter, and knew they were entering into an agreement to split fees with an underwriter. MSJ Order at 12-16; Order ISO Final Judgment at 4. Furthermore, in engaging in this fee-splitting agreement, Respondents "demonstrated a disregard for the conflicts of interest created by such an arrangement and its potential to financially disadvantage their clients." Order ISO Final Judgment at 4 (citing MSJ Order at 12-16).

C. Permanent Injunctions Against Respondents

On September 24, 2024, the Court issued its final judgment, amended on October 7,

2024, against Choice and O'Meara. *See* Order ISO Final Judgment. The Court permanently enjoined Choice and O'Meara from future violations of Section 15B(c)(1) of the Exchange Act and MSRB Rules G-42 and G-17. *Id.* at 13; Amended Injunction Against Defendant Choice Advisors, LLC and Matthias O'Meara, attached to Order ISO Final Judgment, (Docket 105-1) ("Injunction") at 1-2, and 3-4. The Court further enjoined Choice from future violations of Section 15B(a)(1)(B) of the Exchange Act and MSRB Rule A-12. Injunction at 2-3. Additionally, the Court ordered O'Meara to pay disgorgement plus prejudgment interest in the amount of $179,081 and a civil penalty of $133,491; and further ordered Choice to pay disgorgement plus prejudgment interest in the amount of $107,448 and a civil penalty of $79,889. Order ISO Final Judgment at 13. On October 21, 2024, Choice and O'Meara filed a notice of appeal from the Court's final judgment, and that appeal is currently pending before the U.S. Court of Appeals for the Ninth Circuit. *See* Exhibit 1 at Docket 107.

D. The Division's Order Instituting Proceedings

On October 15, 2024, the Commission instituted this follow-on proceeding to determine remedial actions in the public interest against Choice and O'Meara pursuant to Sections 15(b)(6) and 15B of the Exchange Act, and Rule 15Bc4-1 thereunder. On October 24, 2024, counsel for the Division provided a letter to Respondents pursuant to Rule 230 of the Commission's Rules of Practice confirming prior production of the non-privileged documents in the investigative file, and producing certain additional documents. On November 5, 2024, Respondents filed their Answer in this proceeding.

IV. ARGUMENT

A. 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, a party may move for summary disposition on any or all of its claims. *See* 17 C.F.R. § 201.250(b). The motion may be granted if there is no genuine issue with regard to any material fact and the moving party is entitled to summary disposition as a matter of law. *Id.*

The Commission repeatedly has upheld the use of summary disposition in cases such as this, where the respondent has been enjoined and the sole determination concerns the appropriate sanctions. *See, e.g., In the Matter of Gary M. Kornman,* Exchange Act Rel. No. 59403, 2009 WL 367635, at *10, n. 58 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010) (collecting cases).

B. Collateral Estoppel Prevents Relitigation of Issues Resolved by the Court or Its Findings.

The Commission has consistently upheld the use of summary disposition relying on an injunction imposed by a district court, as well as the district court's findings, in determining whether sanctions are appropriate. In doing so, the Commission rejects attempts to relitigate a district court's findings of fact and conclusions of law in its follow-on administrative proceedings. As previously stated by the Commission, "the doctrine of collateral estoppel precludes [respondent] from attacking in this proceeding the injunction and procedural issues actually litigated and necessary to the district court's decision." *In the Matter of Daniel Imperato*, Exchange Act Rel. No. 74596, 2015 WL 1389046 at *4 (Mar. 27, 2015); *see also, In the Matter of Siming Yang*, Initial Dec. Rel. No. 788, 2015 WL 2088468, at *2 (May 6, 2015) ("It is well established that the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding, whether resolved at trial, by consent, or by summary judgment.") (citing cases); *In the Matter of Daniel J. Gallagher*, Initial Dec. Rel No. 644, 2014 SEC LEXIS 2736, at *4 n. 2 (July 31, 2104) (same). The sole determination here is what sanction is supported by the District Court's proceedings. *See Gary M. Kornman*, 2009 WL 367635, at *10.

Respondents' pending appeal to the U.S. Court of Appeals for the Ninth Circuit is not a defense to the imposition of sanctions in this proceeding. As stated in *In the Matter of John W. Lawton*, "an appeal is no basis for delaying an administrative proceeding." Initial Dec. Rel. No. 419, 2011 SEC LEXIS 1484, at *4 (Apr. 29, 2011) (citing cases); *see also Elliot v. SEC,* 36 F.3d 86, 87 (11th Cir. 1994) ("Nothing in the statue's language prevents a bar [from being] entered if

a criminal conviction is on appeal."); *Blinder, Robinson Co. Inc. v. SEC,* 837 F.2d 1099, 1104 n.6 (D.C. Cir. 1988) (explaining that the pendency of an appeal does not diminish the finality, and thus preclusive effect, of a final judgment for the purposes of subsequent litigation).

Here, based upon the District Court's findings and entry of summary judgment, summary disposition is warranted in this administrative proceeding, since the District Court found that Respondents violated the securities laws and the Court permanently enjoined Respondents from further violations of those laws. As described below, for the same reasons that the District Court found that the ordered permanent injunctions were warranted, the public interest would best be served by permanently barring O'Meara from the securities industry, and by imposing a censure on Choice.

C. The Public Interest Requires a Permanent Industry Bar Against O'Meara, and a Censure Against Choice.

The Commission should permanently bar O'Meara from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. In addition, with regard to Choice, the Commission should issue a censure.

Section 15B of the Exchange Act and Rule 15Bc4-1 thereunder, in relevant part, authorize the Commission to bar a person associated with a municipal advisor, either currently or at the time of the alleged misconduct, "from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization," if the Commission finds, on the record after notice and opportunity for a hearing, that such person was associated with a municipal advisor at the time of the alleged misconduct, that such a bar "is in the public interest," and that the person is enjoined from certain violations of the federal securities laws, including, for the purposes of this proceeding, violations of the Exchange Act and the rules of the MSRB. 17 C.F.R. § 240.15Bc4-1. Accordingly, to prevail in this proceeding, the Division must establish that (1) O'Meara is, or was at the time of the misconduct, associated with a municipal advisor, (2) O'Meara has been

enjoined from violating the federal securities laws, and (3) it is in the public interest to impose the bar against him. As to the first two factors, there is no dispute that O'Meara was associated with Choice, a municipal advisor, when he engaged in the misconduct at issue, and that O'Meara has been enjoined from violating certain provisions of the Exchange Act and MSRB rules by the District Court. Thus, the only issue is the third factor, whether the Division's proposed remedies—a bar for O'Meara and a censure for Choice[3]—are in the public interest.

An independent statutory basis for a bar against O'Meara is Section 15(b)(6) of the Exchange Act, which similarly authorizes the Commission, in relevant part, to bar persons associated with a broker or dealer at the time of their alleged misconduct "from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization." 15 U.S.C. § 78o(b)(6)(A). The Commission must find, on the record after notice and opportunity for a hearing, that (1) O'Meara was associated with a broker or dealer at the time of the misconduct, (2) he is enjoined from violations of the federal securities laws, and (3) the bar is in the public interest. At the time of his misconduct, O'Meara was a registered representative of BB&T Securities, LLC, which was a broker-dealer registered with the Commission. In addition, as noted above, O'Meara is enjoined from violations of the Exchange Act and rules of the MSRB.

As to this the third factor, for both Respondents, it is in the public interest to impose the requested bar on O'Meara and the censure on Choice. As the Commission has previously stated, "when considering whether an administrative sanction serves the public interest, we consider the factors identified in *Steadman v. SEC*[.]" *Gary M. Kornman*, 2009 WL 367635, at *6 (citing *Steadman v. SEC,* 603 F.2d 1126 (5th Cir. 1979)). The *Steadman* test considers (1) the degree of scienter involved, (2) the isolated or recurrent nature of the infraction, (3) the respondent's

[3] Analogous to Rule 15Bc4-1, Section 15B(c)(2) of the Exchange Act, provides the Commission the authority to censure a municipal advisor if the Commission finds it "is in the public interest," and that the municipal advisor is enjoined from certain violations of the federal securities laws, including violations of the Exchange Act and the rules of the MSRB. 15 U.S.C. § 78o-4(c)(2). Here, Choice is a municipal advisor and has been enjoined from violating certain provisions of the Exchange Act and MSRB rules by the District Court.

recognition of the wrongful nature of his conduct, (4) the likelihood that the respondent's occupation will present opportunities for future violations, (5) the sincerity of the respondent's assurances against future violations, and (6) the egregiousness of the respondent's actions. *Id.* at 1140 (citing *SEC v. Blatt,* 583 F.2d 1325, 1334, n. 29 (5th Cir. 1978)). The inquiry is a flexible one, with no one factor being dispositive in determining the public interest. *See Gary M. Kornman,* 2009 WL 367635, at *6. The Commission also considers the deterrent effect of administrative sanctions. *See Daniel Imperato,* 2014 WL 3048126, at *7. Industry bars have long been considered effective deterrence. *Id.*

In deciding to impose permanent injunctions against Respondents, the District Court considered the likelihood that Respondents would engage in future violations of the federal securities laws. Order ISO Final Judgment at 3. That analysis, in turn, required that the Court apply the factual findings from its summary judgment order to the non-exhaustive factors set forth in *SEC v. Fehn*, 97 F.3d 1276, 1295 (9th Cir. 1996), and *SEC v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980), which are substantially identical to five of the six *Steadman* factors. Notably, the *Murphy/Fehn* factors are as follow: "(1) the degree of scienter involved; (2) the isolated or recurrent nature of the infraction; (3) the defendant's recognition of the wrongful nature of his conduct; (4) the likelihood, because of defendant's professional occupation, that future violations might occur; and (5) the sincerity of his assurances against future violations." Order ISO Final Judgment at 3 (quoting *Fehn*, 97 F.3d at 1295). As a result, the District Court's factual findings and legal conclusions regarding the appropriateness of the permanent injunctions imposed against O'Meara and Choice apply with equal force to the *Steadman* analysis here and support a finding by the Commission that the requested sanctions against Respondents would be in the public interest. In particular, Respondents' scienter, inability to perceive the wrongfulness of their actions, and intention to continue to represent the same, highly vulnerable clients puts them at a high risk for recidivism, all of which justify protecting the public interest by the imposition of a bar against O'Meara and a censure of Choice.

1. Respondents' Misconduct Demonstrated a High Level of Scienter and Was Egregious.

The Court's rulings establish that Respondents acted with a high degree of scienter, and that their conduct was egregious, which are two of the *Steadman* factors. In finding that Respondents' level of scienter supported a permanent injunction, the Court summarized the undisputed facts demonstrating that Respondents had acted with a "culpable degree of scienter":

> Here, Defendants knew they entered into an agreement to split fees with the underwriter and that, for a short period, O'Meara was employed by both the underwriter and his school clients. MSJ Order at 12–16, 20:17–23:15. Regardless of whether Defendants knew that these arrangements violated the law, their actions demonstrated a disregard for the conflicts of interest created by such an arrangement and its potential to financially disadvantage their clients. MSJ Order at 12–16. As the Court found at summary judgment, Defendants also knowingly engaged in municipal advisory services without being properly registered and withheld this important information from their clients. MSJ Order 9:23–11:22, 19:1–20:16. As seen in emails between Defendants and the lawyer they retained to assist with their registrations, Defendants were well aware that they lacked registration status while representing their charter school clients. Dkts. 62-11, 62 12, Exs. I, J to SEC's Summ. J. Mt. (O'Meara responding "We are legit!!!," to his lawyer's update that their registration was finally completed five months after engaging clients).
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> Order ISO Final Judgment at 4-5.

Respondents, in their opposition to the SEC's motion for final judgment imposing remedial relief, argued that, regardless of whether Respondents knowingly violated the law, they did not intend to cheat their clients. Defendants' Opp. to Mot. for Remedial Relief at 9. However, intentional harm is not the standard for scienter for the federal securities laws. *Cf. United States v. Tagliaferri*, 820 F.3d 568, 575 (2d Cir. 2016) (ruling that the district court did not err in instructing the jury that a criminal violation of the antifraud provision Section 206 of the Investment Advisers Act of 1940 "required only intent to deceive and not intent to harm"); *United States v. Litvak*, 808 F.3d 160, 179 (2d Cir. 2015) (noting that "'intent to harm' is not a component of the scienter element of [criminal] securities fraud under Section 10(b)" of the Exchange Act). Rather, when, as here, a violator intends to "deceive, manipulate, or defraud" his client, he has acted with scienter. *In the Matter of Benjamin Durant*, Exchange Act Rel. No. 96445, 2022 WL 17422581, at *3 n.16 (Dec. 5, 2022) (Comm'n Op.) (internal quotation marks

omitted).

The Court emphatically rejected Respondents' argument that their lack of intent to injure their clients negated scienter:

> While the Court finds credible O'Meara assertions that he did not intend to cheat, injure, or financially disadvantage their clients, Defendants' actions nevertheless demonstrate a disregard for (1) compliance with regulations intended to protect their clients and (2) their obligation to honor the fiduciary duties they owed to their clients. *See* MSJ Order at 10:17–11:14, 16:8–23:15. Although Defendants may have not had a specific intent to cheat their clients, they did intend to obtain and get paid for work that they were not legally permitted to perform and hid this fact from their clients. *See* MSJ Order 10:17– 11:14; 19:1–23:15. As a sophisticated actor in the municipal securities industry O'Meara should have been aware of the potential conflicts of interest posed by his overlapping employment and fee-splitting agreement with the bank that would underwrite the loan for these clients. *See* Dkt. 96-1 ("Defs.' Resp. Mot. Entry of Final J.") at 6:15–7:3. Yet the engagement letters Defendants sent to both school clients affirmatively misrepresented that Defendants had no potential conflicts of interest, stating that (1) "Choice Advisors has no known actual or potential material conflicts of interest that might impair its ability either to render unbiased or competent advice or to fulfill its fiduciary duty to Client" and (2) "Choice Advisors is not aware of any other engagement or relationship Choice Advisors has that might impair [its] ability to either to render unbiased or competent advice or to fulfill its fiduciary duty to [its client]." Dkts. 62-21, 62-24, Ex. S, V to SEC's Summ. J. Mtn. . . .By misrepresenting and withholding information about O'Meara's fee-splitting arrangement and overlapping employment with the underwriter, Defendants knew or should have known that they prevented their clients from deciding for themselves whether they wanted to proceed with an advisor who was operating in a dual role and had conflicts of interest that could affect their representation. MSJ Order 19:1–23:5; *SEC v. Cap. Gains Rsch. Bureau, Inc.*, 375 U.S. 180, 196–197 (1963) (reasoning investors should be allowed to evaluate whether their advisor had overlapping motivations and was "serving two masters or only one") (internal citations omitted).
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> Order ISO Final Judgment at 4-5.

The Court's conclusion that the undisputed facts proved that Respondents provided advice with respect to the issuance of municipal securities even though they knew Choice was not registered as required by law, and that O'Meara acted knowingly in falsely representing to their clients that they did not have conflicts of interest, establish that Respondents acted with a high degree of scienter. This is true even though the specific charges for which Respondents were deemed liable by the District Court did not *require*, as an element, scienter, but instead a

lower level of *mens rea*. *See, e.g.*, *SEC v. Stack*, No. 21 Civ. 00051, 2021 WL 4777588, at *7 (W.D. Tex. Oct. 13, 2021), *report and recommendation adopted*, 2022 WL 1546718 (W.D. Tex. Jan. 24, 2022) (noting that a showing of scienter also meets the lesser burden of negligence for violations of Sections 17(a)(2) and (a)(3) of the Securities Act of 1933) (citation omitted).

The Court's findings also reinforce that Respondents' conduct was egregious. Respondents engaged in numerous violations of the Exchange Act and MSRB rules, and that misconduct took several forms, including failures to disclose their conflicts of interest in breach of their fiduciary duties, affirmative misrepresentations to their clients about those conflicts, the illegal fee-splitting agreement, and the provision of municipal advisory services despite knowing that Choice was not registered. This *Steadman* factor also supports a finding that a bar against O'Meara and a censure of Choice would be in the public interest.

2. <u>Respondents Failed to Acknowledge Any Wrongfulness in Their Behavior.</u>

The Court further found that Respondents' failure to appreciate the wrongfulness of their conduct, in particular, weighed in favor of the permanent injunctions. Order ISO Final Judgment at 6-8. The Court's analysis is fully applicable to the parallel *Steadman* factor. First, even after the Court's ruling on liability, Respondents' briefing regarding remedies continued to minimize their wrongful conduct in favor of "blam[ing] others for their predicament." Order ISO Final Judgment at 7 (citing Defendants' Opp. to Mot. for Remedial Relief at 5:9-11, 5:15-6:2, 7:4-10:15 (regarding minimizing wrongful conduct); and at 5:9-11, 5:15-6:2, 7:4-9:16 (regarding blaming others)). The Court highlighted the facts that Respondents continued to fault lack of guidance from the SEC and the MSRB regarding the term "fee-splitting" under MSRB Rule G-42, and that Respondents blamed their counsel for not registering the firm more quickly. Defendants' Opp. to Mot. for Remedial Relief at 5:9-11, 7:4-8, 8:4-9:16; *see also* Declaration of Matthias O'Meara In Support of Response for Entry of Final Judgment Imposing Remedies, attached as Exhibit A to Defendants' Opp. to Mot. for Remedial Relief (Docket 96-3) ("O'Meara Decl.") at 4:18-6:26.

The Court noted O'Meara's defiance in his testimony and declaration:

> Second, O'Meara's testimony after the Court's summary judgment ruling indicates that he still does not fully appreciate the problematic nature of his actions and his disservice to his clients. During the July 17, 2024 evidentiary hearing, he asserted that his school clients "got what they paid for," were charged a fair price in the market, and did not complain about this performance. Dkt. 101 at 15:9–14 ("Tr. of July 17, 2024 Evidentiary Hearing"). This characterization demonstrates a fundamental misunderstanding of what transpired. His clients did not in fact get what they paid for because they paid for a registered municipal advisor that was legally permitted to provides these services. *See* 15 U.S.C. § 78o-4(a)(1)(B) (stating that municipal advisors cannot "provide advice to or on behalf of a municipal entity . . . with respect to municipal financial products or the issuance of municipal securities . . . unless the municipal advisor is registered" with the SEC); MSRB Rule A-12 (requiring all municipal advisors to register with the MSRB). And whether their clients knew it or not, by law, they were entitled to a municipal advisor that would not have divided loyalties and would not hide these conflicts from their clients. *See* 15 U.S.C. § 78o-4(c)(1); MSRB Rule G-42; *SEC v. Sztrom*, 538 F. Supp. 3d 1050, 1061 (S.D. Cal. 2021) (finding a reasonable investor would have considered it important to know that the individual giving them investment advice and making trades on their behalf was not associated with any registered investment adviser). In light of Defendants' continued statements that the schools were treated fairly because the bond offerings they sought were successfully closed, Tr. of July 17, 2024 Evidentiary Hearing at 15:9–14; O'Meara Decl. at 7:10–16, the Court finds Defendants have not sufficiently understood the wrongfulness of their several breaches of fiduciary duties owed to their clients. The Court therefore concludes that this lack of understanding weighs in favor of an injunction.
>
> Order ISO Final Judgment at 7-8.

In keeping with his recalcitrance, in his declaration attached to Respondents' brief filed in opposition to the Commission's motion for final judgment, O'Meara claimed that he, and not his clients, was the true victim and that he (with his family) and Choice were the only harmed persons. O'Meara Decl. (Docket 96-3) at 10:17-20. O'Meara's continuing inability or unwillingness to understand that he violated the fiduciary obligations owed to his clients heighten the risk of recidivism, and thus this *Steadman* factor weighs heavily in favor of a bar against O'Meara, and a censure of Choice.

3. Respondents Intend to Continue Serving as Municipal Advisors and Are Likely to Have Opportunities to Engage in Future Violations.

In considering Respondents' continued employment in the securities industry and opportunity for future violations—both a *Fehn*/*Murphy* factor and a *Steadman* factor—the Court found that "Defendants may engage future clients who, like Liberty Tree Academy and Bella Mente Montessori, may be smaller charter schools, new to bond offerings and/or unsophisticated with regard to the fiduciary duties owed to them." Order ISO Final Judgment at 8. And in his testimony at the evidentiary hearing during the remedies stage, O'Meara conceded that he is currently and, unless barred, will continue to represent charter schools and first-time issuers as a municipal advisor. Tr. at 13:19-20:1. O'Meara's admission here is particularly concerning in light of the vulnerability of charter schools as participants in the municipal bond process. Such schools' board members generally have no experience with municipal bond offerings, and are often highly reliant on municipal advisors and underwriters to guide the process.

Respondents' continued work as municipal advisors is even more troubling given O'Meara's failure to recognize the wrongfulness of his conduct or sufficiently assure the Court and the SEC that he and Choice will not engage in misconduct in the future. Indeed, the Court found that "Defendants have failed these [fiduciary] obligations in the past, MSJ Order at 19:1–23:15, and continue to show a lack of understanding of the problematic nature of their actions, Tr. of July 17, 2024 Evidentiary Hearing at 15:9–14; O'Meara Decl. at 7:10–16," and that, as a result, "an injunction is necessary to protect any future clients including those that may be less sophisticated first-time seekers of municipal bonds." Order ISO Final Judgment at 8. The Court further ruled that, despite O'Meara's statements that he intends to comply with the federal securities laws in the future, his and Choice's "past disregard of these same obligations and their continued failure to appreciate the full wrongful nature of their conduct" counseled in favor of permanent injunctions. *Id.* For the same reasons, the public interest supports a bar against O'Meara and a censure of Choice.

4. Respondents' Violations Involved Several Different Instances of Self-Serving Illicit Conduct.

With respect to the question of whether Respondents' conduct was isolated or recurrent, which is also a shared *Fehn/Murphy* factor and *Steadman* factor, the Court found that the "factor is either split evenly or weighs slightly in favor of a need for an injunction." Order ISO Final Judgment at 6. The Court acknowledged that Respondents' violations concerned only two clients, and that they occurred at the outset of Respondents' career as municipal advisors. *Id.* However, the Court pointed out that the SEC's case did not involve just a "one-time mistake but instead involved several instances where Defendants disregarded their legal obligations and fiduciary duties to their clients in favor of their own financial interests." *Id.* In addition, the Court observed that O'Meara was "an experienced and sophisticated actor in the municipal securities industry" even before he became a municipal advisor. *Id.* Consistent with the Court's findings, this *Steadman* factor either supports, or is subordinate to the other prevailing factors in, finding that imposing the requested remedies would be in the public interest.

V. CONCLUSION

For the foregoing reasons, the Division of Enforcement respectfully requests that the Commission grant this Motion for Summary Disposition, impose a permanent associational bar against O'Meara under Sections 15(b)(6) and 15B of the Exchange Act and Rule 15Bc4-1 thereunder, and censure Choice under Section 15B(c)(2) of the Exchange Act.

DATED: January 17, 2025

Respectfully submitted,

[redacted]

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CERTIFICATE OF SERVICE

I, Tony Stearns, certify that on January 17, 2025 a copy of the following:

- DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-22250

In the Matter of

CHOICE ADVISORS, LLC AND MATTHIAS O'MEARA,

Respondents.

SEC'S INDEX OF ATTACHMENTS

(MOTION FOR SUMMARY DISPOSITION)

Attachment	Description
1	Docket Sheet in *SEC v. Choice Advisors, LLC, et al.*, No. 21-cv-01669-JO-MSB (S.D. Cal.)
2	SEC's Complaint (Docket 1)
3	SEC's Memorandum of Points and Authorities in Support of Its Motion for Partial Summary Judgment (Docket 62)
4	District Court's Order (1) Granting in Part and Denying in Part Plaintiff's Motion for Partial Summary Judgment; and (2) Denying Defendants' Motion for Partial Summary Judgment (Docket 89)
5	SEC's Motion for Entry of Final Judgment Imposing Remedial Relief (Docket 90)
6	Defendants' Brief in Support of Defendants' Response to Motion for Entry of Final Judgment Imposing Remedies (Docket 96)

OS Received 01/17/2025

7	Transcript of [July 17, 2024] Evidentiary Hearing Before the Honorable Jinsook Ohta United States District Court Judge (Docket 101)
8	Amended Order Granting in Part and Denying in Part Plaintiff's Motion for Entry of Final Judgment Including Certain Remedies (Docket 105)