

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-22286

In the Matter of

MARK J. BOUCHER,

Respondent.

DIVISION OF ENFORCEMENT
MOTION FOR ENTRY OF DEFAULT
JUDGMENT AGAINST RESPONDENT
MARK J. BOUCHER AND
MEMORANDUM OF LAW IN SUPPORT

Pursuant to Rule 155(a) and 220(f) of the Securities and Exchange Commission's ("SEC" or "Commission") Rules of Practice and the Commission's May 7, 2025, Order to Show Cause, the Division of Enforcement ("Division") respectfully moves for entry of default and the imposition of sanctions against Respondent Mark J. Boucher ("Boucher" or "Respondent").

In the Commission's enforcement action against Boucher, he has been found liable by the District Court for the Southern District of California for engaging in a fraudulent scheme to misappropriate substantial assets from certain of his advisory clients. The Court enjoined him from future violations of the antifraud provisions of the securities laws and imposed financial remedies. Boucher has also pled guilty in a separate criminal proceeding to wire fraud based on the same conduct alleged in the Commission's case against him.

The Commission initiated this follow-on proceeding pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") on November 6, 2024. Boucher was served with the OIP on November

14, 2024. Despite being granted an extension of time to respond based on his January 4, 2025, letter to the Commission, Boucher has not responded to the Order Instituting Administrative Proceedings (“OIP”). He is now in default. Therefore, the Division moves for entry of default and the imposition of remedial sanctions. As explained below, it is in the public interest that Boucher be barred from the securities industry.

I. Procedural History and Factual Background

A. The District Court Civil Case

On August 25, 2020, the Commission filed a complaint against Respondent and his closely controlled advisory firm in the civil action *SEC v. Boucher, et al.*, 20-cv-1650, in the United States District Court for the Southern District of California. The Commission’s complaint alleged that Boucher, both directly and through his company Strategic Wealth Advisor Group Services Inc. (“SWAG”), misappropriated more than \$2 million from three of his advisory clients. OIP Section II, ¶ 5; Exh. 1, SEC Complaint (“Compl.”).¹ According to the complaint, Respondent

¹ Under Rule 323, 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. Thus, although the Division moves for sanctions based on the allegations in the OIP, official notice may be taken of the existence of filings and events in other judicial proceedings. *Int’l Star Class Yacht Racing Ass’n v. Tommy Hilfiger U.S.A., Inc.*, 146 F.3d 66, 70 (2d Cir. 1998); *see also, e.g., SEC v. Gallagher*, 2023 WL 6276688, *5 (S.D.N.Y. Sept. 26, 2023) (judicial notice of plea allocution). The Division respectfully requests that judicial notice be taken of the following filings:

- SEC Complaint, *SEC v. Boucher, et al.*, 20-cv-1650 (S.D. Cal. August 25, 2020) (Exhibit 1 hereto);
- Summary Judgment Order, *SEC v. Boucher, et al.*, 2022 WL 17961486 (S.D. Cal. Feb. 8, 2022);
- Judgment, *SEC v. Boucher, et al.*, 2022 WL 4596573 (S.D. Cal. July 14, 2022);
- Final Judgment, *SEC v. Boucher, et al.*, 20-cv-1650, Dkt. No. 78 (S.D. Cal. Jan. 24, 2024) (Exhibit 2 hereto);
- Signed Plea Agreement, *United States v. Boucher*, 3:21-cr-02872 (S.D. Cal. Dec. 21, 2023), Dkt. No. 65;

misappropriated approximately \$669,000 from Client A, a widow in her 60's, largely by forging her signature on dozens of checks drawn on her advisory account. OIP Section II, ¶¶ 7-9; Compl. ¶¶ 27-32. Respondent also used impersonation and his access to two brothers' ("Clients B and C") advisory accounts to steal funds and purchase an expensive car. OIP Section II, ¶¶ 11-12; Compl. ¶¶ 36-41. Finally, Respondent misappropriated funds from Client D's trust after her death. OIP Section II, ¶ 13; Compl. ¶¶ 44-47.

On February 8, 2022, the District Court issued an opinion granting summary judgment on liability in favor of the Commission and holding that Respondent violated Section 10(b) of the Exchange Act, Section 17(a) of the Securities Act of 1933 ("Securities Act"), and Section 206(1) and (2) of the Advisers Act. *SEC v. Boucher, et al.*, 2022 WL 17961486 (S.D. Cal. Feb. 8, 2022). Specifically, the Court found that Respondent knowingly made material misrepresentations and engaged in deceptive conduct, and that he did so while acting as an investment adviser to each of his four victims. *Id.* at **8-13.

On July 14, 2022, the Court entered judgment against Respondent and granted the SEC's request for injunctions enjoining him from future violations of the foregoing securities laws. *SEC v. Boucher, et al.*, 2022 WL 4596573, at *1 (S.D. Cal. July 14, 2022). Following the resolution of a probate matter involving Respondent and Client D's estate², the Court entered Final Judgment against Respondent on January 24, 2024. *SEC v. Boucher, et al.*, 2024 WL 1260273 (S.D. Cal. Jan.

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- Order Approving Settlement Agreement, *In re The Willoene J. Hendry Revocable Trust UDT September 28, 2007*, No. 37-2020-00021665 (Calif. Super. Ct., County of San Diego, July 31, 2023) (Exhibit 3 hereto).

² To resolve the probate proceeding, Boucher relinquished his claims to the funds in (or belonging to) the trust holding Client D's assets, allowing the funds to go to the trust's intended beneficiary. Exh. 3, Order Approving Settlement Agreement. As a result, the trust effectively recovered significant funds that Boucher had misappropriated, reducing his disgorgement and restitution in the civil and criminal district court cases.

24, 2024) (order granting Final Judgment); Exh. 2, Final Judgment. In the Final Judgment, the Court ordered Respondent to pay a total of \$784,798 in disgorgement, prejudgment interest, and penalties, and permanently enjoined Respondent from violations of Section 10(b) of the Exchange Act, Section 17(a) of the Securities Act, and Section 206 of the Advisers Act. Exh. 2, Final Judgment, at §§ I-IV.

B. The District Court Criminal Case

On October 5, 2021, the United States Attorney's Office for the Southern District of California indicted Boucher for essentially the same conduct alleged in the Complaint. On January 29, 2024, Boucher pled guilty to wire fraud. In his plea agreement, Boucher admitted that he knowingly and intentionally perpetrated a fraudulent scheme to misappropriate funds from Clients A, B, and D and engaged in efforts to conceal his misconduct. OIP Section II, ¶ 4; Signed Plea Agreement, *United States v. Boucher*, No. 3:21-cr-02872 (S.D. Cal. Dec. 21, 2023), Dkt. No. 65. On May 28, 2024, he was sentenced to five years in prison and, on July 9, 2024, he was ordered to pay over \$409,000 in restitution. *United States v. Boucher*, No. 3:21-cr-02872 (S.D. Cal.), Dkt. Nos. 94, 127.

C. The Follow-on Proceeding

On November 6, 2024, the Commission initiated this follow-on administrative proceeding against Respondent pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act. The Office of the Secretary served Respondent with the OIP on November 7, 2024. On November 18, 2024, the Division filed a certificate of service. On February 24, 2025, in response to a letter from Respondent sent to the Division, the Commission extended Respondent's time to answer the OIP. He did not answer. Accordingly, on May 7, 2025, the Commission ordered Respondent to show cause by June 23, 2025, why he should not be deemed to be in

default. The Commission also ordered the Division to file a motion for default by July 21, 2025, should Respondent not answer the OIP.

II. Summary of Allegations in the OIP

Boucher was the sole owner of SWAG, an investment adviser formerly registered in California. OIP Section II, ¶ 1. From 2000 to 2016, and from 2016 to 2019, Boucher was also a registered representative associated with two investment advisory firms registered with the Commission. *Id.* Boucher generally had between 80 and 100 advisory clients, to whom he owed a fiduciary duty. *Id.* ¶ 6. His clients were typically individual investors and small business who relied on him for investment advice. *Id.* Between December 2010 and July 2020, Boucher misappropriated over \$2 million from the advisory and bank accounts of certain of those clients. *Id.* ¶ 5.

Client A was a widow in her sixties. *Id.* ¶ 7. Boucher sold securities from her accounts and diverted the proceeds to his personal use, including to pay his credit card debt, fund trips to Hawaiian resorts, and pay other personal expenses. *Id.* Boucher wrote at least 70 checks from Client A's advisory accounts by forging Client A's signature and made other electronic withdrawals, totaling \$669,000. *Id.* ¶¶ 7-9. After Client A discovered the fraud in May of 2019, Boucher initially denied any wrongdoing and tried to hide a letter notifying Client A of a discrepancy in her accounts. *Id.* ¶¶ 10, 14. But after being confronted by the investment advisory firm he was associated with, he admitted that he had possession of Client A's check book and had written checks to pay his credit card expenses. *Id.* ¶ 10.

Clients B and C were brothers and co-owners of an automotive supply business. *Id.* ¶ 11. The week of March 16, 2017, the mother of Clients B and C was in the hospital, dying. *Id.* That day, Boucher sold \$70,000 of securities in Client B's account at Schwab and transferred the

proceeds to Client C’s account. *Id.* He then created a wire authorization to send \$60,000 from Client C’s account to a California car dealership. *Id.* When Schwab requested verification of Client C’s signature, Boucher called Schwab and impersonated Client C. *Id.* Boucher also lied to the car dealership, claiming that he, not Client C, was the source of the wire. *Id.* ¶ 12. Boucher used the funds to buy a Camaro, which he subsequently sold to Client C for \$52,000. *Id.*

Boucher had served as Client D’s investment adviser since at least 2015 and, in that role, had gained her trust and confidence. *Id.* ¶ 13. Before Client D passed away in August 2019 – just a few months after Boucher’s fraud against Client A had been discovered – she had created a revocable trust document providing for the disposition of her assets after death and named Boucher successor trustee and investment adviser for the trust. *Id.* At her death, the trust held \$1.8 million in securities and cash. *Id.* Over the next 12 months, Boucher misappropriated over \$1.5 million of those assets by sending cash, securities, and the proceeds of securities sales from trust accounts to accounts he controlled, including his personal checking and brokerage accounts. *Id.* Boucher used a portion of these trust assets to pay for his personal expenses and credit card debt. *Id.* To hide his misappropriation from the SEC, Boucher created numerous financial accounts and created a forged letter purporting to show that Client D had gifted him \$1.5 million. *Id.* ¶ 14.

III. Boucher Should Be Subject to a Bar

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 period, or otherwise to defend the proceeding.” Here, because Boucher has failed to “answer . . . or otherwise to defend the proceeding” – despite being granted

additional time to respond – the Division respectfully asks that a default judgment be entered against him. *See* Rules 155(a) and 220(f).

In that default judgment, for the reasons explained below, the Commission should permanently bar Boucher from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. *Bartko v. SEC*, 845 F.3d 1217, 1220-21 (D.C. Cir. 2017) (“Under Dodd-Frank, then, the Commission is now able to bar securities market participant from the six listed classes – broker-dealers, investment advisers, municipal securities dealers, transfer agents, municipal advisors and NRSROs – based on misconduct in only one class.”).

“Advisers Act Section 203(f) authorizes the Commission to suspend or bar a person from the securities industry if it finds, on the record after notice and opportunity for hearing, that (1) the person was, within ten years of the commencement of the proceeding, convicted of an offense involving the purchase or sale of any security, or a conspiracy to commit such an offense, or was convicted of an offense that arises out of the conduct of the business of an investment adviser; (2) the person was associated with an investment adviser at the time of the alleged misconduct; and (3) such a sanction is in the public interest.” *Stephen Condon Peters*, Advisers Act Press Release No. 6556, 2024 WL 624010, *2 (Feb. 14, 2024) (citation omitted). A person may also be barred if he or she has been “enjoined from engaging in or continuing any conduct or practice in connection with acting as an investment adviser or in connection with the purchase or sale of any security” and *Peters* factors (2) and (3) are met. *Paul Horton Smith, Sr.*, Advisers Act Release No. 6637, 2024 WL 3413642, *2 (July 15, 2024) (citation omitted).

Each of these factors is met here. First, Boucher has been both convicted and enjoined for actions “aris[ing] out of the conduct of the business of an investment adviser.” OIP Section II, ¶¶

2-4; Exh. 2 (final judgment); Signed Plea Agreement, *United States v. Boucher*, 3:21-cr-02872 (S.D. Cal. Dec. 21, 2023), Dkt. No. 65. Second, he was associated with an investment adviser at the time of the alleged misconduct. OIP Section II, ¶¶ 1, 6 (describing his association with two registered investment advisory firms as well as his ownership of SWAG during the relevant time period); Signed Plea Agreement, *United States v. Boucher*, 3:21-cr-02872 (S.D. Cal. Dec. 21, 2023), Dkt. No. 65.

Third, a bar is in the public interest. To determine whether to impose a bar, the Commission considers several factors, including:

The egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant'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)).

These factors overwhelmingly favor a permanent bar. Boucher's misconduct lasted years and involved not only countless misrepresentations and other deceptive acts but also elaborate efforts to conceal his wrongdoing, including impersonation and forged documents. Indeed, Boucher's fraud is notable for the sheer variety of bad acts, including: undisclosed securities sales; forged checks; fraudulent wires; impersonation; the use of client assets to fund his lifestyle; the shameless resale of the Camaro to Client C; and even the pursuit of a probate action in an effort to keep Client D's assets. OIP Section II, ¶¶ 5-14; Exh. 3. What also defines his fraud is the vulnerability of the victims – a widow, two brothers grieving the imminent loss of their mother, and an elderly woman with myriad medical issues.

In short, these actions were egregious, recurrent, and involved a high degree of scienter. And, although Boucher has pled guilty, his greed, together with his practice of befriending and exploiting the vulnerable, makes him a likely recidivist. He has also failed to offer any assurances against future misconduct in this proceeding. *Scott Allen Fries*, Advisers Act Release No. 6746, 2024 WL 4475696, at *4 (Oct. 10, 2024) (“Because Fries has failed to answer the OIP or respond to the show cause order . . . he has made no assurances that he will not commit future violations or that he recognizes the wrongful nature of his conduct.”). It is also reasonable to expect that, upon his release from prison, Boucher will seek to portray himself as an investment adviser or similar securities expert and continue to harm victims. *Id.* (finding that Fries “offers no evidence about his occupation or . . . future plans following incarceration” and concluding that his participation in the securities industry “in any capacity would pose a risk to investors.”).

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.” *John W. Lawton*, Release No. 3513, 2012 WL 6208750, at *11 (Dec. 13, 2012) (barring respondent from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or NRSRO), modified to permit association with NRSRO and municipal advisor, Release No. 4402 (May 27, 2016)). Respondent’s pattern of misconduct demonstrates that he is incapable of such fairness and integrity. He presents a significant risk to investors and should be sanctioned accordingly. *See Joseph Vitale*, Release No. 1345, 2019 WL 446431, at *4 (Feb. 4, 2019) (“A collateral bar will prevent [Respondent] from putting investors at further risk and serve as a deterrent to others from engaging in similar misconduct.”).

IV. Conclusion

For the foregoing reasons, the Division of Enforcement requests that the Commission grant this Motion for Entry of Default and sanction Respondent by barring him from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or NRSRO.

Dated: July 21, 2025

Respectfully submitted,

/s/ Daniel J. Maher

Daniel J. Maher
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549
Tel: (202) 551-4737 (Maher)
maherd@SEC.gov

Counsel for Division of Enforcement

CERTIFICATE OF SERVICE

I certify that on July 21, 2025, I caused a copy of the forgoing to be mailed by commercial carrier to Respondent Mark J. Boucher.

/s/ Daniel J. Maher
Daniel J. Maher