UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-22307

In the Matter of **EPIC CAPITAL WEALTH ADVISORS, LLC,** **Respondent.**	**DIVISION OF ENFORCEMENT'S BRIEF IN SUPPORT OF PETITION FOR REVIEW OF THE INITIAL DECISION**

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The Division of Enforcement ("Division"), pursuant to Rule 450(a), respectfully submits this Opening Brief in support of its petition for review of the August 8, 2025 Initial Decision ("Dec.") that dismissed this proceeding against Respondent Epic Capital Wealth Advisors, LLC ("Epic"). The Division respectfully requests that the Commission reverse the Initial Decision, find that registering Epic as an investment adviser is not in the public interest, and deny Epic's registration.

After being enjoined and barred by a Colorado state court from acting as an investment adviser until 2033, and being informed by two other states' securities regulators that they intended to deny him investment-adviser registrations, Epic's principal David Anthony ("Anthony") submitted Epic's application to the Commission for the privilege to be a federally registered adviser. In light of the Colorado court injunction, the Commission issued an Order Instituting Proceedings ("OIP") to consider whether to grant Epic's application. Following a four-day evidentiary hearing in June 2025 (the "Hearing"), the Honorable Carol Fox Foelak, Administrative Law Judge, concluded that the Division did not meet its burden because it proved its case about the myriad reasons not to register Epic "differently from how it proceeded on summary disposition and without reference to the OIP's allegations." Dec. 9. Law Judge Foelak reached this conclusion despite: (1) no party objecting to, raising, or even briefing the lack-of-notice issue that the Law Judge deemed dispositive; (2) decades of Commission precedents that establish that the "flexible" public interest inquiry under *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), is not artificially bounded by the language in an OIP; (3) the evidence of actual notice received by Epic; and (4) the Law Judge herself opining that the Division's evidence and arguments raised "serious issues regarding Anthony's fitness to serve in a fiduciary role," Dec. 8. On that last point, the Hearing evidence proved several highly troubling facts, including that Anthony is seeking

Commission registration because multiple state regulators have previously informed him they would deny his requests to register with them; that Anthony repeatedly violated a court order meant to restrain and enjoin his work as an adviser, including by siphoning money from a receivership estate to himself; and that Anthony has made misleading and inaccurate statements on the forms he has submitted to register Epic with the Commission.

Consistent with the fundamental purposes of the Investment Advisers Act of 1940 ("Advisers Act") to guard "the delicate fiduciary nature of an investment advisory relationship," *SEC v. Capital Gains Rsch. Bureau, Inc.*, 375 U.S. 180, 191–92 (1963), the Commission "is empowered to deny or revoke the registration . . . of individuals convicted or enjoined by the courts for securities fraud." H.R. Rep. 2639, 76th Cong., 3d Sess. 28 (1940) (cited in Brief of the SEC to the Supreme Court, *Lowe v. SEC*, 1984 WL 565503, at *20); *see* 15 U.S.C. § 80b-3(e). Where, as here, multiple states have determined that Anthony or his firms are not fit to hold such a fiduciary role, and the Law Judge highlighted Division evidence raising "serious issues" about Anthony's fitness to serve as a fiduciary, the Commission should not become the registrar of last resort for Anthony and his new firm Epic.

To aid the Commission in reviewing Epic's application, the Division presented abundant evidence at the Hearing about the unfitness of Anthony to handle client funds as a fiduciary, much of which the Law Judge apparently accepted and agreed with, and which was consistent with the conclusion that multiple states have rendered against Anthony. The Initial Decision erroneously concludes that the Commission should not rely on that evidence – no matter how egregious or troubling – because it was not specifically mentioned in the OIP. But, to reach that conclusion, the Law Judge bypassed the parties' input, ignored Commission precedent, and disregarded the events of this lengthy proceeding where Anthony received notice that the Hearing would concern the very

public interest factors the Division proved, argued, and on which it continues to rely. Finally, the Law Judge employed the most drastic remedy of dismissing the proceeding outright, when more reasonable curative options (such as providing additional notice or amending the OIP) were and remain available. This was all plainly erroneous, and Epic's application to register should now be denied.

I. Factual Background

This administrative proceeding did not originate from an underlying Division investigation or as a follow-on proceeding to a District Court lawsuit, nor does it seek to impose a penalty on Respondent Epic. Rather, this matter arose because Respondent, by way of its principal Anthony, has three Forms ADV to register Epic with the Commission, first to claim Epic was eligible to register under the "internet adviser exemption" of 17 C.F.R. § 275.203A-2(e), and thereafter to register as a newly formed adviser under 17 C.F.R. § 275.203A-2(c). Under the Advisers Act, the Commission must approve such an application within 45 days or institute proceedings. *See* 15 U.S.C. § 80b-3(c)(2). Here, on the 45th day after Epic's original application was filed (November 8, 2024), the Commission instituted this administrative proceeding by issuing the OIP.[1]

Following preliminary proceedings and discovery, in June 2025, the Law Judge held the four-day Hearing at which four witnesses (one called by the Division and three called by Respondent) testified, a Transcript of 662 pages was prepared ("T."), and 35 Division Exhibits ("DX") and 16 Respondent Exhibits ("RX") were received in evidence. Before addressing specific facts adduced from the Hearing and record, the Division notes that the Initial Decision ultimately premised its dismissal on the legal conclusion that "Respondent was not provided with adequate

[1] The Commission also instituted simultaneous proceedings pursuant to Section 203(f) of the Advisers Act as to Anthony. The Commission recently granted the Division's request to dismiss that proceeding. *See* https://www.sec.gov/files/litigation/opinions/2025/ia-6903.pdf.

'notice of the grounds for denial under consideration' in accordance with Section 203(c)(2)(B) of the Advisers Act and due process." Dec. 9. Thus, while the Initial Decision set out its Findings of Fact, Dec. 2-6, it does not appear any of the found facts were actually relied on or material to the dismissal. Indeed, the Law Judge appears to have credited a great deal of the Division's evidence and concluded, for example, that Anthony repeatedly violated a court order entered against him. *See* Dec. 5.

The Division does not take exception to most of the Findings of Fact made by the Law Judge – there are more than enough in the abbreviated findings of the Initial Decision to conclude the public interest would be disserved by registering Epic. However, the Division notes, and the Commission may wish to consider, that the Law Judge did not mention several substantial, factual matters that bear greatly on Anthony's fitness, most notably Anthony's credibility (or lack thereof) as a witness. Indeed, Anthony's credibility was a central focus of the Hearing: he was repeatedly impeached with his prior inconsistent statements; his demeanor and manner while testifying was repeatedly hostile, confrontational, or evasive; and he even suggested a forward-looking intention to conceal his role and involvement in Epic if accurately disclosing that role could jeopardize Epic's registration. *See* Div. Post-Hrg. Br. at 52-56. These points and Anthony's credibility all clearly bear on the *bona fides* of the Forms ADV that he prepared and signed for Epic; the truth of those assertions depends on Anthony's word, and there are many reasons the Commission should not fully credit it.

A. David Anthony and His Previous Investment Adviser Firm Anthony Capital

David Anthony is the president and only employee of Respondent Epic, a company he formed in September 2022 in Utah, where Anthony resides. Dec. 1, 2 n.3, 5; T. 352:13-353:15.

Epic has no prior business operations, has never been registered with any state, and has no clients or assets under management. T. 382:11-22, 384:3-5.

Epic is not Anthony's first advisory firm; between the mid-to-late 2000s and 2022, Anthony operated Colorado-based advisory firm Anthony Capital, LLC ("Anthony Capital"). Dec. 2-3; T. 39:15-40:2, 40:21-41:3; DX 5, 9. At its peak, Anthony Capital managed between $20 and $30 million in investors' assets. Dec. 3. Because Anthony Capital "didn't have assets of $100 million under management that would be requisite to become a federal advisor," Anthony never applied for SEC registration of Anthony Capital. T. 42:1-12.

B. Anthony's Private Funds Under Regulation D

Between at least 2017 and 2021, Anthony raised tens of million of dollars in investor funds using exemptions under Regulation D ("Reg. D") of the Securities Act of 1933, 17 C.F.R. § 230.500 *et seq*. *See generally* RX 3. Anthony referred to these Reg. D funds as "the private funds," T. 35:5-6, 36:18, and one of his main purposes for setting these funds up was to use them as a Roth IRA "conversion tool[]" for clients, whom he believed could obtain tax benefits by purchasing "alternative investments" through the funds. T. 35:4-12, 77:16-21, 91:1-92:13; Dec. 3.

The private funds at issue in the Hearing, which will collectively be referred to as the "Private Funds," were:

- Anthony Capital Alternative Investments, LLC (hereinafter, "ACAI");
- Anthony Capital Bond Fund 1, LLC (hereinafter, the "Bond Fund");
- Anthony Capital Funding, LLC (hereinafter, the "Promissory Note Fund"); and
- Anthony Capital Alternative Investment Income Funds numbered One through Five (hereinafter, "Income Funds" or, individually, "Income Fund 1, 2…").

Anthony claimed that it was *he*, David Anthony (as opposed to Anthony Capital), that acted as the fund manager, notwithstanding that he named each of the Reg. D private funds with the "Anthony Capital" moniker in the fund's name. T. 79:21-80:3. These Private Funds included two fixed-

income offerings (the Bond Fund and the Promissory Note Fund) which offered annual fixed-rate returns between 10 and 14 percent over different principal-lockup periods, T. 157:3-158:6, and six funds that focused on "life settlement" investments (the "Life Settlement Funds").[2] T. 92:1-6, 80:10-14, 81:7-22, 85:7-11; Dec. 2-3.

1. The Life Settlement Funds

Six of Anthony's Private Funds focused on life-settlement investments. A life-settlement investment involves purchasing a third party's life insurance policy (which Anthony usually purchased through brokers) and the purchaser taking over the premium payments in order to receive the insured's death benefit upon their passing. Dec. 3; T. 88:19-89:11. 92:23-25. Anthony believed that life-settlement investments were "the key and really are the secret sauce to be able to do the discounted Roth IRA conversion," T. 91:3-6, which would make his investors' IRA withdrawals or distributions tax-free, Dec. 3. As Anthony testified at the Hearing, however, this "secret sauce" merely consisted of reporting to the IRS a "fair market" value for the investments that was below the acquisition price that the Life Settlement Funds paid, *and* that such policies were not actually available to purchase at the supposed fair market value. T. 113:1-5, 115:10-17, 658:14-18. This was because the acquisition price included commission payments and fees, including to Anthony, added on top of the "wholesale" price. Dec. 3; T. 124:6-125:20. This higher price was set between Anthony and the seller (with the delta going to Anthony), Dec. 3, and the Initial Decision noted that even one of the investors that Anthony called to testify at the Hearing was "not aware of this relationship between the purchase price of the policy and the

[2] Life settlement arrangements have been held to be "investment contracts and, therefore, securities." *SEC v. Barry*, 670 F. Supp. 3d 976, 979 (C.D. Cal. 2023); *affirmed* 2025 WL 2302189, at *11 (9th Cir. Aug. 11, 2025).

commission Anthony received," and "[t]hus, there [was] at least some evidence that Anthony's life settlement investments involved a conflict of interest." Dec. 3.

2. The Bond Fund and Promissory Note Fund

With respect to the two, fixed-return offerings—the Bond Fund and Promissory Note Fund—Anthony described them as his two "problem children," T. 175:10-15, as the investors in both funds lost all (or almost all) of their principal and received only a fraction of the promised interest payments. Dec. 3-4; T. 168:9-14. The total losses of these investors' principal amounted approximately $7 million. Dec. 3-4; T. 175:16-18. Investors in the Bond Fund lost approximately $5 million after Anthony made private-placement investments into a Florida-based fund called Harbor City Capital ("Harbor City"). T. 152:15-25, 155:15-18, 198:19-22. The Commission announced fraud charges against Harbor City and its principal J.P. Maroney in April 2021. *See* https://www.sec.gov/enforcement-litigation/litigation-releases/lr-25082 (Apr. 27, 2021). The SEC obtained a temporary restraining order and asset freeze, and a receiver was appointed (and remains in place). *See SEC v. Harbor City Cap. Corp.*, No. 6:21-CV-694-CEM-DCI, 2021 WL 3110061, at *1–2 (M.D. Fla. July 21, 2021); *see also* Harbor City Receivership, available at https://www.harborcityreceivership.com/ (last accessed Aug. 26, 2025).

For the Promissory Note Fund, which ostensibly had the objective of placing money in merchant-cash-advance businesses, T. 164:16-165:10, that principal was lost because Anthony placed the money (through an intermediary) with a company called Midtown Resources that Anthony testified "stole the funds and would not return the funds to us." T. 169:1-3. Notably, over $600,000 of the lost funds included money that Anthony had *loaned* from one of his Life Settlement Funds to the Promissory Note Fund. T. 164:15-165, 173:6-173:19.; DX 23 at 92:17-22, 134:18-22. In another related-party transaction, Anthony also sent money *from* his Promissory

Note Fund to Life Settlement Funds. T. 177:14-178:8. Anthony justified these related-party transactions by claiming that his Life Settlement Funds constituted small- or medium-sized businesses, notwithstanding his acknowledgement that those funds employed *only* him and had no business operations other than making investments at Anthony's direction. T. 177:24-178:19. When asked if he told any of the Promissory Note Fund investors that his definition of small-businesses included Anthony's own funds, Anthony testified that he "might have mentioned" that to "[i]nvestors that called and asked about questions on accounts," which was "only one or two" who "wanted to see bank statements about what had actually happened with the funds. . . ." T. 181:4-13. Thus, by Anthony's own account, to the extent he disclosed these particular related-party transfers, he did so only after the fact and to no more than one or two investors.

C. The Colorado State Investigation and Lawsuit

In May 2021, the Colorado Division of Securities ("CDS") began an examination of Anthony Capital. T. 206:6-9. As part of that examination, Anthony gave a lengthy telephone interview to Colorado state regulators, during which he discussed much of the above-described conduct concerning the Private Funds. *See generally* DX 23. Troublingly, Anthony's testimony at the Hearing deviated, sometimes starkly, from his statements in that interview with Colorado regulators. *E.g., compare* T. 162:12-163:15 (describing that "Matthew" was not compensated in connection with Bond Fund) *with* DX 23 at 96:1-5 ("And my Matthew Yore . . . was compensated as well with the same overrides that we got from the money flow."); *compare* T. 156:6-13 (describing one or two unaccredited investors in Bond Fund) *with* DX 23 at 32:9-17 (describing 12 or 13 unaccredited investors in Bond Fund).

1. The CDS Complaint and Colorado State Court Case

On March 1, 2022, the Colorado Securities Commissioner, through the Colorado Attorney's General's Office, filed a lawsuit on behalf of the CDS against Anthony, Anthony Capital and many of the Private Funds (collectively, the "Anthony Entities"), *see* DX 5. The Colorado Securities Commissioner's civil complaint (the "CDS Complaint") was filed in the District Court for Denver County, Colorado (hereinafter, the "State Court" and the "State Court Case"). *Id.* at 1. The CDS Complaint alleged multiple violations of Colorado state securities law, including that Anthony and some or all of the Anthony Entities (1) offered and sold unregistered securities without being licensed as a sales representative and through entities that were not licensed as broker-dealers; (2) offered investment advice and accepted commissions through entities that were not licensed as investment advisers; (3) commingled money invested in his various offerings and used proceeds from some funds to pay off investors in other funds; and (4) failed to provide full and fair disclosure of material facts to investors, including that he received commissions ranging from 21 to 44 percent and that about $2.3 million in investor money went directly to him. *Id.* ¶¶ 4-7, 24, 71-128.

On March 2, 2022, the Colorado State Court entered an *ex parte* temporary restraining order freezing the Anthony Entities' assets and enjoining them and Anthony from, *inter alia*, offering or selling securities to any person in or from Colorado, acting as a securities investment adviser, or engaging in securities fraud. *See* DX 6 (hereinafter, the "TRO"); T. 211:22-212:11, 213:4-216:4. The TRO included an asset freeze against "[a]ll bank, trading, or other financial accounts owned, operated, and controlled by Anthony." DX 6 at 4. Anthony understood that "[a]t that time everything was still frozen and we couldn't do anything unless we got the Judge's approval. And the assets were going to remain seized." T. 223:14-21.

2. Anthony's Intentional Violations of the State Court's Receivership Order

Over Anthony and his attorney's objections, on May 9, 2022, the State Court entered an Order Appointing Receiver, DX 9 ("Receivership Order"), designating Randel Lewis as the Receiver (hereinafter, the "Receivership" and "Receiver") to take over, control, and administer the Anthony Entities' assets and operations, as well as selected assets of Anthony personally, all of which was placed into a receivership "Estate." *See id.* at 2-13 (enumerating powers of the receiver). The Anthony Entities were "ordered to deliver immediately over to the Receiver all of the Estate, and shall cooperate with the Receiver in the administration of the Estate." *Id.* (¶ 4). While Anthony testified that he cooperated with the Receiver "100 percent," T. 239:17-20, the record plainly showed, and the Initial Decision found, that Anthony repeatedly violated the terms of the Receivership Order (DX 9), including by:

(1) diverting $100,000 of money payable to the Receivership estate to himself, T. 251:24-255:13; DX 9 at 2-5, 14-15 & ¶¶ 5 & 15.d; DX 48C ¶¶ 9(d), 93; Dec. 5.

(2) conducting financial transactions for certain of the Anthony Entities after the Receivership Order was in place, including opening up a bank account for Anthony Capital, LLC, and sending money to close a transaction, T. 237:20-23, T. 257:8-258:25; T. 264:3-265:11; DX 9 at 4-6 & ¶¶ 3 & 5.a, 5.c & 5.i DX 48C-at ¶¶ 9(c), 93-94; Dec. 5.

(3) continuing to carry out some operations of the Anthony Entities including by filing tax returns for those entities and claiming, inaccurately, that this was not part of the operation of the receivership; T. 246:4-247:8; DX 9 at 7 & ¶ 5.m.i; DX 48C at ¶ 9(a); Dec. 5; and

(4) continuing to communicate with investors post-Receivership, Dec. 5.

With respect to the $100,000 that Anthony diverted from the Receivership estate, Anthony testified that that was not happenstance; rather, he had arranged with the payor to pay him to cover his living expenses. T. 253:20-254:6.

3. Settlement and Judgment of State Court Case

A trial in the State Court Case was scheduled to begin in late February 2023. T. 266:22-267:14. Prior to the trial, on January 5, 2023, Anthony participated in a mediation with counsel, his wife (who was a relief defendant in the State Court Case), his wife's attorney, CDS representatives, the Receiver, and a retired Colorado state judge who served as the mediator. T. 267:15-268:14; Dec. 5. During the mediation, Anthony surreptitiously recorded his portion of the mediation proceeding on his cellphone (which he later attempted to use in violation of Colorado law making mediation communications confidential). Dec. 5; T. 270:12-24, 273:6-18; DX 17 at 7 n.1.

At the conclusion of the mediation, Anthony signed a Memorandum of Settlement, as did an attorney representing the CDS. Dec. 5; T. 282:23-283:18; DX 12. Anthony read the Memorandum of Settlement before signing it, T. 284:4-5, but, despite the presence of his counsel, contended that he "did not understand the ramifications of that document." T. 284:24-285:3. The settlement memorandum provided that the parties in the State Court Case would "[f]ile a stipulated injunction for 10 years barring David Anthony from offering and selling securities in the state of Colorado," and that the "language of the injunction will track the" CDS Complaint. DX 12 at 1; Dec. 5. Further, it provided that the parties would "[s]ign a consent order suspending the investment adviser license of Anthony Capital LLC and the investment adviser representative license of David Anthony for 10 years." DX 12 at 1; Dec. 5.

After the settlement agreement was signed, Anthony decided he no longer wished to settle. T. 301:3:-6; Dec. 5. At some point, Anthony determined that the basis for backing out of the settlement was his concern that it would impair his ability to register in states other than Colorado. Dec. 5. However, two days after agreeing to the settlement, on January 7, 2023, Anthony posited

an entirely different basis for backing out of the settlement in an email to his wife, attorney, and wife's attorney with the subject line: "Harbor city notice- Alabama & Reasons to rescind the order," and lodged a series of reasons about why he needed to "break this settlement deal." DX 29 at 2. While the Initial Decision credited Anthony's statement that his concern was about his ability (or lack thereof) to get licensed as an adviser outside of Colorado, that was not a concern mentioned in this email. T. 311:14-23. Anthony instead wrote in the email various reasons why Harbor City was *not* a fraud. DX 29 at 1.

Anthony then fired his attorney and hired new counsel to move the State Court to unwind the settlement, DX 17 at 2; T. 557:19-558:23, while the CDS moved the State Court for enforcement of the agreement. T. 312:15-315:24; DX 13-16. On February 28, 2023, the State Court issued an order that, *inter alia*, enforced the January 5, 2023 settlement memorandum as valid. *See* DX 17. The State Court's Order rejected Anthony's arguments that the settlement resulted from mutual mistake or misrepresentation by the mediator. *Id.* at 4-9; Dec. 5. Thereafter, Anthony's attorneys moved for reconsideration, which the State Court also denied. *See generally* DX 19; Dec. 5.

4. The 10-Year Injunction Against Anthony and Anthony Capital

After the rulings on the settlement, in April 2023, the State Court entered an injunction prohibiting Anthony from engaging in a variety of securities-related activities in Colorado for a period of ten years; the injunction specifically prohibits Anthony from:

a. Offering to sell or selling any securities or investments in the State of Colorado;

b. Making recommendations or otherwise rendering advice to clients in the State of Colorado regarding securities and managing securities accounts or portfolios for clients in the State of Colorado; and

c. Engaging in business in the State of Colorado as a securities broker-dealer, sales representative, investment adviser, or investment adviser representative.

DX 4 at 1. In May 2023, the Colorado Securities Commissioner also entered an Order that suspended Anthony's Colorado investment adviser representative license as well as the license of Anthony Capital until 2033. *See* DX 21 at 2-3; T. 324:30-327:8.

Anthony appealed the State Court decision to enforce the settlement, again represented by an attorney, but the Colorado Court of Appeals dismissed the appeal with prejudice as untimely in July 2023. *See* DX 20; T. 327:10-328:10; Dec. 5.

D. Anthony's Efforts to Register Anthony Capital with Various States

After the Colorado injunction went into effect, on December 1, 2023, Anthony submitted a Form ADV to Utah regulators to register "Anthony Capital, LLC" with the state. DX 25 at 1, 6; Dec. 5. On the Form ADV submitted to Utah, signed under penalty of perjury, Anthony stated that the registrant was organized under the laws of the state of Utah, DX 25 at 6, and had CRD Number 152504, *id.* at 1. The statements were false, *first*, because there was no "Anthony Capital, LLC" formed under the laws of Utah when Anthony filed the form: Anthony did not actually incorporate the new Anthony Capital (Utah) entity until December 5, 2023. *See* DX 33. *Second*, the CRD number Anthony put on the Form ADV was for the Colorado-incorporated Anthony Capital, LLC, and Anthony had not applied to transfer that number to his new Utah entity (which did not exist). T. 53:11-13, 54:5-8; *see also* DX 36 at 1 n.1.

On September 30, 2024, Utah regulators advised Anthony that the state intended to deny Anthony Capital's registration request with Utah. T. 361:1-19, 362:5-12. In particular, Utah cited Anthony Capital's application being "materially incomplete" including for "failure to file a CRD Form U4," and "for documentation and response to the Division's Comment Letter of February

2024" related to the Colorado State Court Case and Receivership. DX 36 at 2; T. 367:18-368:19. Based upon Utah's intent to deny his registration, Anthony withdrew the Utah application. *See* DX 37; T. 369:5-22. When he corresponded with Utah regulators about that withdrawal, a Utah official informed him that federal registration of Anthony Capital, or another entity, as an investment adviser would not necessarily relieve Utah's licensing requirements for "investment adviser representatives and solicitors in Utah for investment adviser representatives affiliated with federal-covered investment advisers." DX 37 at 1. Utah regulators further told Anthony: "The application for an investment adviser representative [("IAR")] is similarly reviewed as it was for the state-covered adviser firm *and may result in a denial*," DX 37 at 2 (emphasis added), thus offering a clear warning that any IAR application Anthony might submit in Utah could face the same obstacles as his attempt to register Anthony Capital. *See also* T. 370:10-371:12.

Anthony also testified that he applied to California to be an investment adviser or IAR and that such an application was also withdrawn "[p]robably because this stuff was going on in Colorado and I wasn't going to be an advis[e]r anymore." T. 403:22-404:9.

E. Epic Capital

In late-September 2024, while Anthony Capital's application to Utah was still pending, Anthony filed the first of three Forms ADV with the Commission to register Epic. DX 1; T. 352:13-353:15. The initial Form ADV stated that Epic was then-eligible to register with the Commission as an "internet adviser" under Rule 203A-2(e). *See* DX 1 at 5. Although the application (like other forms ADV) was signed by Anthony under penalty of perjury, T. 353:20-355:17, Anthony's testimony at the hearing revealed that Epic was not ready to provide internet advisory services at that time, and further that Anthony had no real plan or intention to be an internet adviser because "when I spoke to the SEC when they came back and they said, well, you

know, do you plan on actually speaking to any of your clients? I said, well yeah, I'm probably going to end up speaking to my clients. And they said, well, you probably shouldn't be in the [internet] only advisor. . . . When I found that new information, then I went back and I rescinded my internet only advisor application and clicked the box that said now I'm applying for the 120 day-rule but *still used all the same forms*." T. 354:8-22 (emphasis added); *see also* T. 380:3-8. This last statement about using the same forms for Epic whether it registered as an internet-adviser or as exempt under the 120-day rule [17 C.F.R. § 275.203A-2(e)], as well as additional statements Anthony gave about his business plan remaining essentially unchanged, T. 354:18-355:7, were puzzling because there should be clear differences in the Forms ADV (and business operations) between an internet-only and traditional adviser. *See* Internet Adviser Registration Reforms, available at https://www.sec.gov/files/ia-6578-fact-sheet.pdf.

On October 2, 2024, after Anthony withdrew the Utah application for Anthony Capital, he amended Epic's Form ADV to the Commission to register Epic under Rule 203A-2(c), which permits investment advisers expecting to be eligible for Commission registration within 120 after their registration becomes effective. Epic asserted that it had an expectation to be managing $100 million or more in assets within 120 days of registration. *See* DX 2 at 1, 5; T. 378:14-381:7. In a comment letter regarding Epic's amended Form ADV (DX 38), the Division of Examinations identified various matters for review and correction, including that Anthony "may be subject to a restraining order and asset freeze as well as numerous other entities controlled by the adviser's owner," and "may also currently be under receivership," which Exams explained "appears to be a material fact relating to the advisory relationship that is required to be disclosed in the Form ADV Part 2A brochure." DX 38 at 2. In response, on October 25, 2024, Anthony submitted another

amendment to Epic's Form ADV, DX 3 at 1; T. 387:8-10, and that is the operative application at present.

Anthony testified equivocally as to whether he would withdraw Epic's registration, as required by the Form ADV, if he did not raise the required $100 million within 120 days. T. 386:20-387:78; DX 2 at 6; DX 3 at 6; *but see* T. 571:16-20. Anthony also conceded that his Form ADV would *not* disclose as a risk to investors that if Epic loses its SEC registration it could face difficulty registering as a state adviser in light of his prior registration issues with Colorado, Utah, and California. T. 417:13-418:6; 604:16-605:18. Anthony further explained that, if his personal IAR registration becomes an obstacle to future registration of Epic with a state, he would hire new personnel to manage client funds, T. 577:15-578:4, 582:15-21, and that if Anthony's ownership of Epic became an issue, he would transfer ownership to a family member or trusted person but effectively remain in control:

> So if that came to this place, in this example, and the regulation was, you can't have anyone who owns the company that has a suspended license affiliated with Epic Capital Wealth's Advisors on or ownership side, okay, then I would transfer ownership to *my wife or my child* or someone else that I know I can trust, to have them be the owner of the company so we could satisfy that requirement, if that was a deal-breaker with the state or any other state, and I would continue to be the rainmaker and the face and bring all the funds in and those could be allocated to the investment adviser representatives, those are all scenarios that we can look at.

T. 606:19-607:8 (emphasis added).

II. Procedural History

A. Order Instituting Proceedings

On November 8, 2024, the Commission issued the OIP to determine whether Epic's application to register as an adviser should be denied. The OIP alleged, in Section II, that "[w]ere Epic Capital to be registered as an investment adviser, its registration would be subject to suspension or revocation under Section 203(e) of the Advisers Act," OIP ¶ 5, because Anthony,

"the president, chief compliance officer, and 100% owner of Epic Capital," *id.* ¶ 3, was subject to an April 17, 2023 "final judgment . . . . enjoining [him], for 10 years, in the State of Colorado, from offering and selling securities, making recommendations or otherwise rendering advice to clients regarding securities and managing securities accounts or portfolios for clients, and engaging in business as a securities broker-dealer, sales representative, investment adviser, or investment adviser representative as set forth in the Order of Permanent Injunction and Other Relief in the [State Court Case]," *id.* ¶ 7. The OIP alleged that Anthony, having been enjoined in the state of Colorado, is a "person associated with" Epic, 15 U.S.C. § 80b-2(17), and under Section 203(e) of the Advisers Act, 15 U.S.C. § 80b-3(e), the Commission "shall deny" Epic's registration if, among other reasons, the firm's registration would otherwise be subject to suspension or revocation. A suspension or revocation would be appropriate if (1) any person associated with the adviser has been enjoined from acting as an investment adviser, or from engaging in any conduct or practice in connection with that activity, and (2) such action is in the public interest. *See* 15 U.S.C. § 80b-3(e)(4). The OIP alleged that the "[O]rder [of Permanent Injunction and other Relief] resulted from a complaint filed in March 2022 by the Securities Commissioner for the State of Colorado against Anthony and his various entities, including Anthony Capital. (It did not involve Epic Capital)." OIP ¶ 8. The OIP then summarized allegations from that CDS Complaint. *Id.*

Next, in Section III, the OIP provided that this proceeding was instituted to address two questions: (A) "[w]hether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;" and (B) "[w]hether the pending application of Epic Capital for registration as an investment adviser should be denied pursuant to Section 203(c)(2)(B) of the Advisers Act." *Id.* at 3. The OIP further

directed Epic to file an answer to the allegations, *id.*, which Epic did on December 2, 2024, and it then filed an Amended Answer with approximately 29 exhibits.

B. Motion for Summary Disposition

On December 13, 2024, the Division moved for Summary Disposition on the basis that Anthony had indisputably been enjoined by a Colorado court and a selection of record material that the Division submitted were or appeared to be undisputed and indicated that, under the *Steadman* public interest factors, Epic's registration was not in the public interest. *See* Div. Mtn. for S.D. at 13. Epic filed an opposition to the motion for summary disposition, to which the Division replied.

On January 23, 2025, the Commission denied the Division's motion for summary disposition and stated: "There are genuine issues of fact material to the Division's contentions that Anthony committed misconduct and that denial of Epic's application is therefore in the public interest." Order Denying Mtn. for S.D. at 2. The Order continued: "In particular, the Division does not identify any state court findings entitled to preclusive effect as to Anthony's conduct, nor does it address the egregiousness of Anthony's conduct, its isolated or recurrent nature, or his degree of scienter, all of which are factors that are necessary to our determination whether denial of Epic's application is warranted. Although Epic Capital acknowledges that Anthony is associated with Epic Capital and that the court entered an injunction against him, the firm also disputes that Anthony committed the violations alleged in the Colorado Action. We therefore find that there are genuine issues of material fact regarding whether denial is in the public interest and deny the Division's motion for summary disposition." *Id.* at 2 (internal citations omitted). The Commission referred the matter to a law judge for "for purposes of taking evidence on the

questions set forth in Section III of the OIP," and deemed this matter "under the 75-day timeframe," *id.* at 4.

C. Pre-Hearing Proceedings and Discovery

On January 24, 2025, Law Judge Foelak was designated the Presiding Judge in this matter, and in February 2025, Epic consented to extend the time to conclude these proceedings until October 20, 2025. *See* Order dated Feb. 18, 2025. On March 25, 2025, the Law Judge entered a scheduling order that provided for a discovery period, prehearing briefs, the evidentiary hearing, and post-hearing submissions. *See* Order dated Mar. 25, 2025. During discovery, the Division served Anthony with two subpoenas (issued on motion to the Law Judge). *See*, *e.g.*, DX 50. The first subpoena required Anthony to produce, *inter alia*, "[a]ll documents related to Epic Capital Wealth Advisors, LLC's eligibility to register as an internet adviser under rule 203A-2(e)"; and "[a]ll documents related to Epic Capital Wealth Advisors, LLC's expectation to obtain eligibility for SEC registration within 120 days under rule 203A-2(c)." *Id.* at 2.

On May 23, 2025, the Division filed a Pre-Hearing Brief that addressed the relevant statutory framework for this proceeding and gave a detailed preview of its expected evidence and arguments under *Steadman*. The Division's Pre-Hearing Brief then laid out what had occurred in the Colorado State Case, the contested settlement, and the 10-year Colorado injunction. *Id.* at 6-8. With respect to anticipated arguments, the Division's brief detailed Anthony's rejected attempt to register with Utah, that Epic's business appears intended to be similar to Anthony Capital (where Anthony's disciplinary issues arose), and that if Epic does obtain registration but is thereafter *not* able to obtain $100 million in assets or otherwise become eligible within four months, Epic may face a circumstance where it will have no jurisdiction where it can readily register. *Id.* at 11-13.

Epic did not file a pre-hearing brief, nor did it respond to or in any way oppose the Division's expected evidence or arguments from its Pre-Hearing Brief or draft exhibit list (also filed and shared with Epic on May 23, 2025).

D. Hearing and Initial Decision

At the Hearing, the parties each gave opening statements. Of note, during Anthony's opening statement he specifically responded to the Division's expected evidence about state authorities being unwilling to register Anthony (or his entities) and plainly acknowledged understanding a principal theory of the Division's case: "Well, simply to clarify that the rationale that they're using as to this language that [the Division's attorney] had stated that two different states have looked at Anthony and they said that he's not fit to be an advis[e]r." T. 24:5-9. Thereafter, the Division called Anthony as its only witness The Division questioned Anthony on matters related to whether granting registration was in the public interest, including his management of his prior firm Anthony Capital, the Colorado State Case, his violation of the Receivership Order, his unsuccessful attempts to register with other states, and the three Forms ADV submitted for Epic. Epic, by way of Anthony, called three Anthony Capital investors.

Following the Hearing, the Court set a briefing schedule for post-hearing submissions. Consistent with that schedule, the Division filed its Post-Hearing Brief on June 23, 2025. Although simultaneous briefing was ordered, Epic did not submit a post-hearing brief. *See* Dec. 2. Nor did Respondent file any opposition to the Division's Post-Hearing Brief or propose any findings of fact or conclusions of law. *Id.* Respondent also has never filed any objection to the OIP and never filed a motion for a more definite statement, 17 C.F.R. § 201.220(d).

On August 8, 2025, the Law Judge issued the Initial Decision dismissing the proceeding. Dec. 1. After making various Findings of Fact, the Initial Decision concluded that the injunction

from the Colorado State Case "satisfies the statutory predicate under Section 203(e)." *Id.* at 7. However, the Law Judge then stated that the Division "shifted gears" at the Hearing and "now concedes it has abandoned trying to prove the disputed facts related to the underlying misconduct." *Id.* Reasoning that "[t]ypically, the *Steadman* factors turn on analyzing the underlying misconduct or violations that gave rise to the injunction that serves as the statutory predicate," *id.*, the Law Judge concluded that the Division's Hearing evidence beyond the allegations in the CDS Complaint was outside the scope of the "grounds for denial under consideration" given in the OIP, and as a result Anthony and Epic were "not provided with adequate notice" of those grounds. *Id.* at 8-9. Thus, the Law Judge concluded the "Division failed to meet its burden of proof, and the proceeding must be dismissed." *Id.* at 9.

III. Standard of Review

Rule 411(a) of the Commission's Rules of Practice authorizes the Commission to "affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, an initial decision by a hearing officer and may make any findings or conclusions that in its judgment are proper and on the basis of the record." 17 C.F.R. § 201.411(a). The Commission's review of an initial decision is *de novo*. *See In the Matter of Gary M. Kornman*, 2009 WL 367635, at *9 n. 44 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010); *Richmark Capital Corp.*, 2003 WL 22570712, at *l (Nov. 7, 2003) ("We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal.").

IV. Argument

A. The Initial Decision Wrongly Decided a Legal Issue without Notice to or Submissions from the Parties.

The Initial Decision's exclusive reliance on a legal conclusion about notice and due process that was *not* presented by any party, *not* made known to the parties as an issue being considered by Law Judge, and has *not* previously been briefed to an adjudicator was clear procedural error. "Under our adversarial system of adjudication, we follow the principle of party presentation . . . 'in both civil and criminal cases, in the first instance and on appeal . . ., we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.'" *United States v. Sineneng-Smith*, 590 U.S. 371, 375–76 (2020) (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008)); *see also United States v. Burke*, 504 U.S. 229, 246 (1992) ("The rule that points not argued will not be considered is more than just a prudential rule of convenience; its observance, at least in the vast majority of cases, distinguishes our adversary system of justice from the inquisitorial one.") (Scalia, J., concurring). In *Sinenang-Smith*, for example, the Court held it was a "drastic departure" from this principle when the Ninth Circuit ordered *amicus* to a criminal appeal to brief a series of issues not presented by the criminal defendant (and in partial contravention of the parties' own positions), which the Supreme Court characterized as the "panel's takeover of the appeal." 590 U.S. at 378-80.

Here, the Law Judge inserted a dispositive legal issue, never raised or argued by any party, into the proceeding without notice to (or argument from) the parties, and then *sua sponte* decided the entire proceeding based on that undisclosed issue. Indeed, had the Division been alerted to this issue of concern to the Law Judge and asked to provide a response or briefing (as it is doing here), the Law Judge's concerns about notice could have been argued and, perhaps, addressed. Or, as explained below, procedures could have been undertaken to give any additional notice required to

Epic. The Division has had, and continues to have, no intention to proceed in this matter against Epic without the firm having full notice and an opportunity to be heard on the issues raised about its application. On that point, it is notable though that Epic has declined however to file either pre- or post-hearing briefs addressing why it should be registered, and it also has not contested or refuted any of the Division's proposed findings of fact and conclusions of law. Moreover, by foregoing the parties' input, the Initial Decision did not consider that Respondent may have intentionally decided not to pursue (and therefore waived) the very due-process argument the Law Judge now concludes is dispositive, nor did Law Judge ever evaluate Epic's right to file a motion for a more definite statement under Rule 220(d). And the issue of waiver is not a speculative one: Anthony has made clear throughout this proceeding that one of his primary motivations to pursue Epic's registration is (and a principal point he wished to make in the Hearing was) to expose what he views as fraud by the State of Colorado, the Receiver, and mediator in the State Court Case. *See* T. 396:17-400:3 ("I said, yes, the truth needs to be told. I'm going to apply as an SEC Registered Advisor so that we can get this in print, we can get out what actually happened, and we can get this."). But, in failing to first alert the parties and allow briefing on the issue of adequate notice, the Law Judge developed no record to base her decision on, including to determine if Epic waived or forfeited this issue. *C.f.* Fed. R. Civ. P. 56(f)(2) ("After giving notice and a reasonable time to respond, the court may: (2) grant the motion on grounds not raised by a party.").

Under normal circumstances, this type of procedural error could be remedied by vacating the Initial Decision and remanding the matter for further proceedings on the issue. However, the abbreviated time that the Commission has to decide Epic's application to register (which Epic has not agreed to extend), is likely insufficient for vacatur and remand. Moreover, in this circumstance, such a remand is unnecessary because prior Commission decisions and caselaw

make clear that an OIP does not limit the Division's evidence, and that evidence here readily establishes that Epic's registration is not in the public interest.

B. The Initial Decision Misconstrued the Notice Requirements for this Proceeding and Failed to Account for the Notice Epic Actually Received.

The Initial Decision's explanation and analysis of the notice required in the OIP was mistaken. Not only did the Initial Decision fail to cite or address the Commission's pleading standards for OIPs, it also overlooked pertinent Commission decisions that have "long [] established that a respondent is not entitled to disclosure of the evidence on which the Division intends to rely or to disclosure of the Division's theory of the case." *In the Matter of Optionsxpress, Inc., et al.*, 2012 SEC Lexis 2231 at *5 (July 11, 2012) (collecting cases). Moreover, the Division has consistently stated in this proceeding that the *only* issue (given the non-disputable nature of the Colorado injunction) for the Hearing was the public interest factors under *Steadman*. *See* Div. Pre-Hrg. Br. at 11. The Initial Decision did not correctly recognize that this has been the Division's position. And, because no party was permitted to supply the record, the Law Judge failed to consider the abundant evidence that Epic had notice about what the Division would prove.

1. The Initial Decision Mistook the Applicable Pleading Standards for OIPs and Advisers Act Section 203(c)(2)(B).

There are multiple pertinent pleading and notice standards applicable here that the Initial Decision overlooked, misconstrued, or both. First, Commission Rule 200(b) sets forth that an OIP (in a matter where an answer is directed) must contain the "factual and legal basis alleged therefor in such detail as will permit a specific response thereto." 17 C.F.R. § 201.200(b)(3); *see also In the Matter of David Pruitt, CPA*, 2019 SEC Lexis 666, *21 (Mar. 28, 2019) ("Recognizing that the second clause of Rule 200(b)(3) does not include language similar to Federal Rule of Civil

Procedure 9(b), this means in practical terms that the requirements of Rule 200(b)(3) fall somewhere between Rule 8(a)(2) and Rule 9(b).”). As the Commission has explained its pleading rules: “The OIP must inform the respondent of the charges in enough detail to allow the respondent to prepare a defense, but it need not disclose to the respondent the evidence upon which the Division intends to rely.” *In the Matter of Rita J. McConville*, 2005 SEC Lexis 1538 at *27-29 (June 30, 2005) (rejecting, *inter alia*, argument Division’s evidence was outside scope of OIP).

Second, as cited in the Initial Decision, the registration provisions of the Advisers Act provide in Section 203(c)(2)(B) that “such proceedings” to determine whether an adviser’s registration should be denied “shall include notice of the grounds for denial under consideration.” 15 U.S.C. § 80b-3(c)(2)(B); Dec. 9. The Initial Decision, however, did not address the interplay, if any, of this statutory language and the Commission’s Rules concerning OIPs and administrative proceedings. This oversight was problematic because the statute’s language indicates only that “such proceedings,” not only the OIP or any particular document, must provide the notice.

Here, in any event, the OIP in Sections II and III laid out the statutory and factual basis on which Epic’s application to register *may* be denied, and those allegations were made in a manner entirely consistent with Commission precedent, its Rules, and the requirements of Section 203(c)(2)(B). The Commission’s OIP alleged the statutory bases that the Division contended would support denying Epic’s application were Sections 203(c)(2)(B) and 203(e). The OIP alleged that the Division contended that registration should be denied under Section 203(c)(2)(B) because “its registration would be subject to suspension or revocation under Section 203(e) of the Advisers Act.” OIP ¶¶ 5-6 & at 1, 3. Section 203(e) provides, in relevant part, that the registration of an investment adviser shall be suspended or revoked if the Commission finds that such suspension or revocation is (1) in the public interest and (2) the investment adviser or any person

associated therewith is "permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction, . . . from acting as an investment adviser, . . . broker, dealer, . . . or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security." 15 U.S.C.§ 80b-3(e)(4). The OIP also alleged the factual bases about the existence of the injunction: it alleged that Mr. Anthony is a "person associated with" Epic, OIP ¶ 3, that a Colorado court entered a 10-year injunction against him, *id*. ¶ 7, and, thus, "[w]ere Epic Capital to be registered as an investment adviser, its registration would be subject to suspension or revocation under Section 203(e) of the Advisers Act," *id.* ¶ 5. The OIP further alleges that Epic Capital filed an application on Form ADV, which was twice amended. *Id.* ¶ 4.

The Initial Decision erred by concluding that these allegations in the OIP were limited to or derived from the allegations in the CDS Complaint; they were instead premised on the existence of an injunction that resulted from that complaint. Ultimately, the Law Judge mistook that it was *not* the facts alleged in the CDS Complaint that led to the injunction, it was Anthony's agreement to settle the lawsuit. By merely referring to some of the allegations in a complaint that preceded the State Court Case, the OIP did not expressly or implicitly restrict the bases that could be used to establish the public interest factors about *Epic*. Nor does the OIP allege that the allegations of the CDS Complaint would be proven in this proceeding. Nor does the OIP say that those allegations (from the operation of Anthony Capital) have anything to do with Epic's business (after all, Epic did not even exist at the time of the CDS Complaint). Indeed, Epic is only implicated because its principal Anthony has indicated on the Forms ADV that he is an associated person with Epic, and that triggers a potential disqualification under Section 203(e). There is no statutory disqualification for Epic simply because a state securities commissioner previously *accused* one of

its associated persons with misconduct. The disqualification, and this proceeding, have only been triggered because of the injunction. In short, the Initial Decision gave independent, but inaccurate, legal effect to the recitation of the allegations of the CDS Complaint in paragraph 8 of the OIP and misconstrued those allegations as supplying the basis for the public interest factors that would apply to Epic.

Further, the Initial Decision's characterization of the Division's proof as, essentially, unrelated to the allegations in the CDS Complaint did not recognize that much of the proof the Division offered at the Hearing was nevertheless about Anthony's actions at Anthony Capital, including during litigation when he wrongfully tried to retain control of Anthony Capital (instead of the Receiver). For example, the Receivership Order that Anthony violated was issued shortly after the filing of the CDS Complaint, and that Receivership Order was a critical issue in the State Court Case. That Receivership Order also was directed at and enjoined the defendants named in the CDS Complaint. Thus, while Anthony's violation of the Receivership Order was not alleged in the complaint that initiated the State Court Case (since the order only went into effect after the complaint was filed), to conclude, as the Law Judge did, that the Division "shifted gears" by merely presenting what transpired in in the Colorado State Case missed the mark. Anthony's misconduct during that lawsuit reflected as high degree of scienter as any matter charged in the CDS Complaint.

Consistent with the pleading requirements of OIPs, the allegations levied here made it apparent to Epic that its registration may be denied because of the Colorado injunction against associated person Anthony, and that was more than sufficient for Epic to file an answer (which it did).

2. The Commission May and Regularly Does Consider Matters Not Pleaded as Allegations in an OIP.

The Commission has repeatedly held that evidence in a public-interest inquiry is not limited to the allegations of the OIP; indeed, the Commission's prior opinions make clear that the public-interest inquiry can consider matters not set out explicitly in the OIP. *See In the Matter of Robert Bruce Lohmann*, Exchange Act Release No. 48092, 2003 SEC LEXIS 3171, at *17 n.20 (June 26, 2003) ("The law judge felt foreclosed from considering this conduct since it was not charged in the OIP. . . . However, we have considered such conduct in proceedings before us.") (citing, *inter alia*, *In the Matter of Joseph J. Barbato*, Release No. 41034, 1999 SEC Lexis 276 at *38-39 (finding that respondent's conduct in contacting former customers identified as Division witnesses relevant under public interest analysis)); *c.f. In the Matter of Marketlines, Inc.*, 1967 SEC Lexis 929 at *20 (Jan. 20, 1967) ("There is no substance to the contention that such background [referring to registrant's CEO having been convicted of state crimes and being disbarred] should be disregarded in determining the extent of any sanction to be imposed merely because Romanoff's conviction and disbarment occurred about 13 years before [registrant] filed its application for registration.").

The Initial Decision did not properly evaluate such Commission precedents or account for cases where conduct outside the OIP was clearly considered at the adjudicative stage. Indeed, the Initial Decision appeared to recognize this principle but, nevertheless, then attempted to distinguish such precedent by crafting a new limitation that the Commission only considers such matters to a non-defined "limited extent." Dec. at 7. This reasoning did not follow from Commission precedent, nor is it a persuasive reason to deviate from precedent. For example, in support of the proposition that matters outside the OIP are considered only to a "limited extent, such as when considering the likelihood of future violations," the Initial Decision cited the

Lohmann proceeding mentioned above. But *Lohmann* does not contain the "limited extent" language or concept that the Law Judge articulated, but instead includes the Commission's express correction to an ALJ who (wrongly) believed it could not consider matters outside the OIP. The Commission explained: "The Division contends that the law judge should have considered Lohmann's lies to staff during the investigation of this matter in assessing sanctions. The law judge felt foreclosed from considering this conduct since it was not charged in the OIP… However, we *have considered* such conduct in proceedings before us." 2003 SEC Lexis 3171 at 17 n.20 (emphasis added). Moreover, the likelihood-of-future-violations question is plainly one of the *Steadman* factors, 603 F.2d at 1140, and thus there should be nothing "limited" or less important about evidence that directly bears on that factor, especially in a matter (like this one) where the question is whether to p*rospectively* register a new adviser.

In addition to turning *Lohmann* on its head, the Initial Decision made no attempt to reconcile its new procedural standard against the cases cited by the Division in the Post-Hearing Brief where matters beyond what was alleged in the OIP were considered under the public-interest inquiry. The Division's Post-Hearing Brief cited prior Commission cases where adverse conduct beyond an underlying securities law violation was viewed as relevant to the public-interest inquiry; including the *In the Matter of Meyer Blinder*, 1995 SEC Lexis 89 at *10 (Jan. 17, 1995) ("On the other hand, Mr. Blinder's threats of violence against individuals support my judgement that he should not be allowed to participate in the securities industry) and *Marketlines*, which was examined above and involved the Commission considering a CEO's earlier disbarment and larceny conviction. *See also Marketlines, Inc. v. SEC*, 384 F.2d 264, 267 (2d Cir. 1967). In comparing the orders instituting those matters to the final Commission decisions, the Division has identified no reference in those OIPs to any of the allegations of violence or being disbarred or a larceny that

nevertheless became factors at the adjudication stage. *See Meyer Blinder*, 1994 SEC Lexis 588 (OIP does not mention threats of violence); *see also id.*, 1997 SEC Lexis 2078 at *8 ("We also share the law judge's view that Blinder's threats of violence against certain government officials weigh in favor of severe sanctions against Blinder."); *see also Marketlines*, 1965 SEC Lexis 787 (July 19, 1965) (no mention of larceny or disbarment). Together these cases stand for the proposition that evidence, including threats of violence and unrelated disciplinary proceedings, may be relevant in a public-interest inquiry. Notably, the evidence introduced by the Division here – all ancillary to the CDS Complaint (such as violating court orders issued in that lawsuit) or Epic's current applications to register – was far more closely tied to the injunction supporting the public-interest inquiry.

By mistaking the precedent concerning the nature and variety of evidence that may be considered under the "flexible" public interest inquiry, the Initial Decision implicitly required that the Division's theory of the case and evidence be prospectively (and prematurely) pleaded in an OIP. This logic led the Initial Decision to conclude that the "Division shifted gears," Dec. at 8, 9, when in fact the Division has consistently indicated that the only issue (given the non-disputable nature of the Colorado injunction) was the public interest factors under *Steadman*.

3. The Initial Decision Disregarded the Actual Notice Epic Received.

The Initial Decision did not assess or appear to consider what notice Epic has actually received in addition to the OIP. Throughout the proceeding, and specifically in the lead up to the Hearing, the Division notified Epic about its evidence and expected proof, and the proceedings and Law Judge provided the firm many opportunities to respond to such evidence (which it has generally declined to do). Even now, to the extent the Commission believes there is a defect in the prior notice, Epic can still be provided that notice and given yet another opportunity to be heard.

However, the Division respectfully notes that, to date: (1) no party ever disputed or claimed lack of adequate notice; (2) during discovery, the Division served Anthony with subpoenas about several of the issues it presented at the Hearing (which Mr. Anthony provided incomplete responses to); (3) the Division provided Epic with its anticipated exhibit list ten days prior to the Hearing; (4) the Division outlined in its Pre-Hearing Brief and opening statement its expected evidence; and (5) the Division laid out all of its public interest arguments and evidence in a thorough Post-Hearing Brief. Throughout, Anthony was given ample leeway by the Law Judge prior to and during the Hearing to present his case, which he did. Although Epic has not filed any opposition to the Division's briefing, that is not because the firm did not receive notice—Epic has been given every opportunity to present its arguments from the evidence, and to respond to the Division's briefing, and has *chosen* not to avail itself of those opportunities.

Here, the Law Judge authorized a discovery period in this matter from March 25 to May 9, 2025. During that time, the Division, on approval of the Law Judge, issued two subpoenas to Anthony. Anthony did not object to those subpoenas or move to quash them. The first subpoena called for, among other things, "[a]ll documents related to Epic Capital Wealth Advisors, LLC's eligibility to register as an internet adviser under rule 203A-2(e)" and "[a]ll documents related to Epic['s] expectation to obtain eligibility for SEC registration within 120 days under rule 203A-2(c)," and a client and anticipated client list. *See* DX 50. These requests made plain that the Division was not strictly looking to present evidence about the CDS Complaint's allegations; rather, it sought evidence about the validity of the bases on which Epic was seeking to register, and that evidence then led the Division to argue from Epic's own inconsistent (or false) Forms ADV that it would not be in the public interest to register this entity. Notably, the Division spent substantial time at the Hearing walking through a series of false or misleading claims in Forms

ADV Anthony has submitted (both to the Commission and State of Utah), which undermined Anthony's credibility and revealed Epic was not actually ready to provide internet advisory services as represented, T. 354:8-22, T. 380:3-8, and, although not stated in any of the Forms ADV, that one of Anthony's reasons for applying for SEC registration *for Epic* was to expose what he viewed as wrongdoing by the State of Colorado with Anthony Capital. T. 396:17-400:3.

After discovery, and ten days before the Hearing, the Division filed its Pre-Hearing Brief and draft exhibit list and provided them to Epic. The Pre-Hearing Brief previewed the same legal theory the Division relied on at and after the Hearing—that "there can be no dispute that the disqualification trigger of Section 203(e) is met" and "the crux of the forthcoming hearing concerns the public interests, if any, that would be served in granting or denying Epic's application." Div. Pre-Hrg. Br. 11. Further, the Pre-Hearing Brief set out many of the same policy considerations, including that "the public interest is not generally served in providing the imprimatur of SEC registration for an investment adviser whose principal" cannot register with any state, *id.* at 12, that if Epic raises less than the $100 million required for Commission registration, it "will face a circumstance where it will then have no jurisdiction where it can readily register," *id.* at 13, and that that issue was a *continuing* one. Although the Initial Decision disregarded all of these arguments as "not part of a *Steadman* public-interest analysis predicated on the underlying violations alleged in the Colorado Action," Dec. 9, that reasoning failed to address why the Division having told Epic about these arguments before the Hearing was not sufficient.

Next, at the beginning of the Hearing, the Division gave an opening statement outlining its expected Hearing evidence where it again reiterated: "The question now is not about penalizing Mr. Anthony, not about barring him from any industry, and certainly not about redoing or re-litigating what the various state securities authorities have already decided. It is only about

whether it is in the public interest to grant the registration of his new advisory firm." T. 8. The Division then outlined that its evidence would include activities of Anthony Capital, *id.* at 8-11, concern Anthony's life-settlement investments, *id.* at 11-12, address the CDS examination and lawsuit that led to the TRO and preliminary injunction, *id.* at 12-14, and then look at Anthony's conduct after the lawsuit and reaction to the settlement, *id.* at 14-15. The Division also restated the same public interest arguments from its Pre-Hearing Brief. *Id.* at 15-18.

During the Hearing, Anthony did not object that the Division's evidence about the Colorado State Case was beyond the scope of the OIP. Indeed, he objected to having to testify about the multiple Forms ADV he submitted to the Commission, T. 350:14-15 ("Your Honor, can I object to any additional questions about Epic Capital being an internet advis[e]r") and failing to properly respond to the Division's subpoena, T. 351:23, and the Law Judge never indicated that the Division's evidence would, or even might, be disregarded as beyond some perceived scope. On top of which, Epic (by Anthony) tried to use the hearing to justify why multiple Colorado state officials should be arrested or prosecuted, a matter well beyond the OIP.

In short, the Division did not state to Epic or the Law Judge at any point that its public interest arguments and evidence would be confined to the CDS Complaint's allegations. To the contrary, the Division was repeatedly clear it would not be relitigating and proving a state-securities fraud case that *was settled*.

C. The Drastic Remedy of Dismissing the Proceeding was Inconsistent with Commission Precedent and Places Investors at Risk.

The Initial Decision's dismissing the proceeding was not the appropriate remedy. The better and more-appropriate procedure were there (or if there remains) any doubt about the adequacy of notice was to follow the course taken in *In the Matter of Don Warner Reinhard*, 2011 SEC Lexis 158, *13-14 (Jan. 14, 2011), a decision also cited by the Law Judge. Dec. 8. Again,

while Epic *was* provided with repeated notice of the Division's anticipated evidence and arguments and has not objected to any lack of notice, nor filed a post-hearing brief, nor even responded to the Commission's invitation to address the briefing schedule on this Petition for Review, there is still sufficient time to provide more notice before the Commission issues a decision.

Although the Initial Decision cited *Reinhard* for the proposition that "[w]hen the Commission's public-interest analysis is based on violations not mentioned in the OIP, it has provided the parties with prior notice," Dec. at 7, the Law Judge overlooked an essential holding of the case. Namely, that where there is a concern over notice, the concern can be readily remedied by simply providing the responding party notice. In *Reinhard*, an adviser appealed an initial decision barring him for having been enjoined based on a default judgment. 2011 SEC Lexis 156 at *2. In that proceeding, the Commission expressed concerns on the preclusive effect of a default. *Id.* at *13-14. In addition, after proceedings were instituted, Reinhard pleaded guilty to various counts of a federal indictment, *id.* at *7-8, 12. Following a remand from the Commission, the law judge requested briefing from Reinhard on whether his conviction (post-OIP) should be considered, which Reinhard opposed "but did not file any additional pleadings with the law judge." *Id.* at 15. The law judge then issued a supplemental initial decision again barring Reinhard and taking "official notice of Reinhard's 2009 criminal conviction in assessing the public interest." *Id.* On appeal of that decision, the Commission then specifically sought briefing on whether that OIP "should be amended to reflect Reinhard's criminal conviction and the relevance of that conviction to the Commission's consideration of the public interest." *Id.* at 15-16. The Commission then issued an order giving notice it may consider the conviction, and thereafter held there was no need then to amend the OIP. *Id.* at 16-17.

In short, *Reinhard* provides helpful guidance both that an OIP need not specifically allege every public interest factor relied on in an adjudication and, more critically, that questions over notice are resolved by giving notice and an opportunity to be heard, not dismissal. In addition, the Commission's Rules expressly allow for the "submission of additional evidence" prior to the Commission issuing a decision, 17 C.F.R. § 201.452, and, to the extent the foregoing arguments are not accepted, the Division has no objection to Epic being provided a final opportunity to provide any further response to the Division's evidence or argument.

D. The Public Interest Would Not Be Served by Registering Epic.

At the Hearing, the Division established a range of problematic conduct by Anthony, including fraudulent and even arguably criminal conduct, absence of remorse or changed behavior, expressed intent to commit future securities-law violations if necessary to continue operating Epic, and other instances of poor judgment, as well as clear public-interest concerns about registering federally an adviser apparently unable to obtain state registration. Such evidence is all relevant to the flexible public interest inquiry, where no single factor is dispositive. *In re. Anton & Chia, LLP*, 2021 WL 517421, at *88 (Feb. 8, 2021); *Kornman*, 2009 WL 367635, at *6; *see also Berko v. SEC*, 316 F.2d 137, 141 (2d Cir. 1963) ("In reviewing these findings, it is important to remember that the Commission is charged with the duty of enforcing the statute in the 'public interest,' a mandate which necessarily 'gives the Commission broad discretion' and that its orders are intended to be remedial rather than penal, a result of the fact that the 'design of the statute is to protect investors' and the general public in this specialized field.") (internal citations omitted).

1. Anthony's Misconduct Was Repetitive and Showed a High-Degree of Scienter.

The Division established a range of highly problematic behavior by Anthony during his oversight of Anthony Capital, through the State Court Case, continuing through his applications

submitted to the Commission, that demonstrates repeated misconduct with a high-degree of scienter.

First, the record established that Anthony did not disclose a conflict of interest arising from the pricing of "retail" life settlement policies negotiated by Anthony and a selling-broker to include (and hide the size of and price-impact of) Anthony's commission. Dec. 4-5. Although the Initial Decision characterized the Division's proof at the Hearing as having been unrelated to what was alleged in the CDS Complaint, this particular non-disclosure was one of the many securities fraud allegations in that complaint. *See* DX 5 at ¶ 89(e) ("In connection with the offer and sale of securities, Defendants . . . failed to disclose material facts to investors, including . . . "e. Overages were built into the prices for life settlement funds, which were then paid to Anthony as commissions."). In addition, throughout Anthony's testimony, a recurring pattern emerged that suggested he consciously withheld information from, or selectively disclosed information to, certain investors in his Private Funds, did not appreciate conflicts of interest between himself as fund manager and the funds, and acted repeatedly in a way that suggested he was prioritizing his financial interests over the funds' interests. One clear example of this concerned the $602,000 loan that one of Anthony's Life Settlement Funds (Income Fund Two) made to the Promissory Note Fund, some or all of which was then lost to the fraud at Midtown Resources. T. 173:6-173:19. While Anthony had written a letter to the Promissory Note Fund investors to inform them that their principal was lost, where he told of a "complete loss because of fraud due to Midtown Resources . . . being deemed a Ponzi scheme [by] the Securities and Exchange Commission," T. 172:23-173:5, 177:5-13, he failed to share the same information with Life Settlement Fund investors, and maintained he did not share this because he believed he could still meet the promised investment return. In another example involving the Promissory Note Fund, Anthony

described his decision to classify his Life Settlement Funds as "small or medium-sized" businesses so that Promissory Note Fund money could be sent to Life Settlement Funds. In so doing, Anthony thus apparently decided it was in Promissory Note Fund's best interest to invest in other funds also run by Anthony *and* to classify those funds as akin to small businesses (when he of course was aware that he was the only "employee" and the funds were not traditional small businesses), all without prior disclosure to the Promissory Note Fund's investors.

Second, the evidence at the Hearing established, and the Law Judge found, that Anthony repeatedly violated the Receivership Order in the State Court Case that removed his control over the Anthony Entities. The Commission, respectfully, should not register an adviser managed by an individual who so willfully and repeatedly violated court orders meant to enjoin and restrain his conduct as an investment adviser. The Division showed that what Anthony did in the Colorado State Case effectively amounted to contempt. Irrespective of Anthony's views of the propriety of the orders entered in the Colorado State Case, his obligations to follow the judge's orders were clear, and Anthony's testimony showed that his violations were based on knowing disobedience. *See, e.g., Walker v. City of Birmingham*, 388 U.S. 307, 314 (1967) ("An injunction duly issuing out of a court of general jurisdiction . . . served upon persons made parties therein and within the jurisdiction, must be obeyed by them, however erroneous the action of the court may be. . . ."). And, if Anthony cannot be trusted to follow orders of judges, there is little to no guarantee he will follow the rules and directives applicable to registered investment advisers.

Third, Anthony has already demonstrated his willingness to flout the requirements of a registered adviser by Anthony's misleading and inaccurate completion of regulatory filings, principally a Form ADV he submitted to the State of Utah for Anthony Capital and the Forms ADV he submitted to the Commission for Epic. The Division introduced three Forms ADV for

Epic, DX 1, 2, 3, and one for Anthony Capital, DX 25. Each form indicates it was made under penalty of perjury, DX 1 at 41, DX 2 at 41, DX 3 at 42, DX 25 at 37, and Anthony testified that he signed the forms under penalty of perjury, T. 59:19-22, 61:1-2, T. 355:11-17. Here, the Commission is entitled to expect full and truthful information is provided to it. Yet, the record showed that Anthony clearly misrepresented the status of Anthony Capital (claiming it was in existence as a Utah company) at the time he tried to register it in Utah. *Compare* DX 25 at 1, 6 with DX 33 at 1-2. That form also misrepresented that this same, then-fictitious Anthony Capital, LLC (Utah) had a CRD number that it did not. Anthony's motive for this was obvious: because he did not want the State Court Case against Anthony Capital (Colorado) to be considered by the Utah regulators; indeed, he told Utah regulators, "Anthony Capital, LLC Utah is different from Anthony Capital, LLC Colorado. *Colorado has no jurisdiction over a UT entity that was created after the case in Colorado was settled*." DX 35 at 2 (emphasis added).

In addition, the Forms ADV submitted for Epic to the Commission contain multiple inaccuracies and omissions. The first Form ADV submitted for Epic claimed that Epic was eligible to register with the Commission as an internet adviser, when the firm did not have an operational, interactive website and Anthony did not intend to provide his advisory services exclusively through that website as required by that exemption. Indeed, when Anthony was served with a subpoena in these proceedings that required him to produce all documents "related to Epic Capital Wealth Advisors, LLC's eligibility to register as an internet adviser under rule 203A-2(e)," DX 50 at 1-2, he provided no records at all about Epic's internet advisor eligibility, DX 41 at 1. Also, as the Initial Decision found, the attachments to his Form ADV contain a "misleading" statement. Dec. 6 ("He also stated he was a Certified Financial Planner through 2022 and was 'currently renewing as of 09/23/2024.' However, this was misleading because . . . he was aware

that the Certified Financial Planner board was concerned about his Colorado suspension and might not renew his credential.") (internal citation omitted).

Fourth, Anthony's testimony and conduct at the Hearing revealed that Epic, if its registration is granted, would be operated, and its compliance overseen, by an owner who has seemingly undertaken no rehabilitation or voiced any credible intention to change prior questionable conduct. Indeed, the passage of time since the conclusion of the State Court Case has indicated that Anthony has instead turned to baseless accusation, instead of self-reflection and reform. Anthony's demeanor and manner during his testimony was repeatedly hostile, confrontational, or evasive. He refused to answer relevant questions, responded at times simply by posing the question back to Division counsel, was caught repeatedly omitting relevant facts, and further was routinely impeached. *See*, *e.g.*, T. 363:2-7 ("A. What do you think the point was?"); T. 407:17-18 (Q. Okay. What was the name of the third party? A. That's proprietary."); T. 358:1-6 ("A. No, you're not. You've got a plan. And I did complete this application. You're not being honest."); T. 384:1-5 (A. I think you know the answer to that. Yes."); *see also compare* T. 249:10-12 ("Q. My question was, did you open any other bank accounts after the receivership order was entered? A. To the best of my knowledge, no.") *with* T. 264:3-14 ("A. So, to cut to the chase, I did open up an account. I funded it with my personal moneys."). And, Anthony's repeated invocations of perceived misconduct or crimes having been committed against him by Colorado authorities reveals nothing more than the most basic and transparent refusal to accept responsibility for or reform problematic past conduct. *See*, *e.g.*, *SEC v. Gordon*, 822 F. Supp. 2d 1144, 1162 (N.D. Okla. 2011) ("Finally, Gordon has not recognized the wrongfulness of his conduct and he has given no assurance that he will refrain from future violations of federal securities laws."); *In the Matter of Robert D. Boose*, 1991 WL 292044 at *3 (Feb. 11, 1991) ("Mr. Boose's presentation

is of little relevance in determining the public interest issue because the main thrust of his evidence is that his 'kangaroo style' conviction was in error and that he did not commit the crime of conspiracy to commit securities fraud for which he was convicted after a jury verdict.").

Finally, when Anthony was questioned as to whether Epic would handle disclosures in the future differently than at Anthony Capital, or whether he would be more fulsome in his acknowledgment of potential investment risks to clients, he refused to concede his practices would change. For example, Anthony refused to acknowledge an apparent requirement that Utah regulators had warned him of by email in October 2024 that his own IAR registration may be denied by the State of Utah (even if Epic is registered with the Commission), which could prevent him from working on behalf of Epic, T. 605:19-607:8. When the question was put to him about whether he would disclose that risk to potential investors, Anthony volunteered an elaborate, deceitful workaround instead of disclosure, including, if needed, "transfer[ing] ownership to my wife or my child or someone else that I know I can trust" to create, in effect, a nominee owner of Epic. That answer suggested Anthony's future plans with Epic may include deceiving either clients or regulators (or both) that Epic has an owner or is controlled by a person (Anthony's wife or child or trusted third-party) that it is not—conduct that itself could be a violation of the securities laws. This testimony was highlighted in the Initial Decision, Dec. 6, but the Law Judge nonetheless concluded that the Division still had not met its burden.

2. There are Myriad Risks to Registering a Firm Whose Principal and Only Officer and Employee Appears Unable to Obtain State Registrations.

The public interest is not generally served in providing the imprimatur of SEC registration to an investment adviser whose principal and only employee appears unable to be registered with a state. This leads to a substantial public-interest concern that if Epic does obtain SEC registration

but is thereafter not able to obtain or maintain $100 million in assets under management, it will face a circumstance where it may have no jurisdiction to which it can readily transition as a state-registered adviser. Contrary to the statement in the Initial Decision, the Division has *not* argued that Epic will be unable to raise $100 million, nor argued that its ability to raise money (or not) should be part of the calculus of approving a Form ADV; rather, the concern is different: even if Epic raises the necessary AUM but that amount declines in the future, the firm (because of Anthony) will be in a position where it holds client funds but cannot register with the only option available—a state.

Because Anthony is the sole owner and controller, he will remain "associated with" Epic, *see* 15 U.S.C. § 80b-2(17), and thus it is the firm that is burdened by Anthony's prior conduct on a prospective basis. Utah regulators noted this issue in connection with their IAR licensing requirement, which is separate from Epic's application here. *See* DX 37 at 2 ("Note: Even though the Adviser is not a state-covered investment adviser but has applied as a federal-covered investment adviser, the firm has not filed a notice in Utah, nor has it ensured that the firm has complied with requirements for licensure of investment adviser representatives conducting business in Utah with Utah clients . . . .The application for an investment adviser representative is similarly reviewed as it was for the state-covered adviser firm and may result in a denial."). *See also* "Federal vs. State Regulation," *at* https://securities.utah.gov/licenses/utah-licensing-guide ("Also, federal covered advisers must still license any IA Rep with a place of business in Utah or more than five clients in Utah.") (last visited Aug. 29, 2025).

The clearly foreseeable circumstance here is that Epic, even if registered, may be unable to obtain necessary state investment adviser registration (if its assets deplete) or Anthony the required

IAR registration. Not only should these potentialities be disclosed to potential clients, Epic should (but does not) have a credible plan to handle a licensure gap.

3. There is a Public Interest in According Weight to Multiple State Regulators' Prior Adjudications.

Anthony's testimony revealed that at least three states have informed him that he is not eligible to register there as an adviser. That multiple states have prohibited or indicated their intent to prohibit Anthony from working in the same capacity he is asking the Commission to approve carries some persuasive effect. Not only, as outlined above, does it impact Epic's potential options to transition to a state-registered adviser if that becomes required, but those decisions indicate that other regulators have recognized some of the troubling issues that the Division has presented evidence about here. The State of Utah, in particular, flagged some of the same issues concerning Anthony's candor and the accuracy of his applications, *see* DX 36, including that he applied for licenses for entities that did not even exist and that he omitted substantially material facts. And while Epic technically had nothing to do with the Colorado State Case—as noted, the firm was not even incorporated until after the case began—Anthony testified that he told investors he wanted to use Epic's application to the Commission as a vehicle for "the truth" (in his mind) about Anthony Capital and the Colorado State Case "to be told." T. 398:19-24. Thus, this registration attempt is, in part, an effort by Anthony to litigate and overwrite what state authorities have said about Anthony's fitness to be a fiduciary. But the Law Judge here also recognized the Division's evidence raised "serious issues" about Anthnoy's fitness, Dec. 8. In short, multiple authorities that have dealt with Anthony previously have flagged clearly concerning behavior by Anthony and that has impacted their willingness to register him. But, the Division submits, the Commission should not become the registrar of last resort for someone who multiple states do not wish to register, and for whom the record demonstrates that registration would not be in the public interest.

V. Conclusion

The Initial Decision erred in dismissing this proceeding and granting Epic's request to register as an investment adviser. The Commission should deny Epic's application.

Respectfully submitted this 29th day of August, 2025.

/s/ James P. McDonald
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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief in Support of the Petition for Review contains 13,827 words excluding the cover page, table of contents, table of authorities, and certificates of compliance and service.

/s/ James P. McDonald
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing and any attachments was served on the following on August 29, 2025, in the manner indicated below:

Epic Capital Wealth Advisors, LLC (via email)
c/o Mr. David Anthony
dave@epiccapitalwealth.com

/s/ James P. McDonald
Division of Enforcement
Securities and Exchange Commission