UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6102 / August 31, 2022

Admin. Proc. File No. 3-19635

In the Matter of

STEPHEN CONDON PETERS

ORDER REQUESTING ADDITIONAL BRIEFING AND DENYING STAY AS MOOT

On January 6, 2020, the Securities and Exchange Commission issued an order instituting administrative proceedings ("OIP") against Stephen Condon Peters pursuant to Section 203(f) of the Investment Advisers Act of 1940.[1] The OIP alleged that Peters had been convicted by a jury of, among other things, defrauding investors and obtaining money and property by means of materially false and misleading statements in connection with the fraudulent sale of notes to investment advisory clients. Peters filed an answer, and on February 12, 2020, the Division of Enforcement filed a motion for summary disposition requesting that Peters be barred from the securities industry. Peters responded to the motion by filing an additional document also styled as an "answer," but which in substance argues that "Summary Disposition of this matter" is not "appropriate until [he] ha[s] completed the appeal of [his] conviction." Because his appeal has been resolved, we deny Peters' request to stay this proceeding until the completion of the appeal of his criminal conviction as moot. We also order the parties to file additional briefs.

We first address Peters's stay request. Peters "maintain[s] [his] innocence" and asserts that there is a "genuine material issue" of disputed fact regarding his underlying conduct, which forms the basis for his appeal. But that appeal has now been resolved: The U.S. Court of Appeals for the Fourth Circuit affirmed his conviction, and his subsequent petition for a writ of certiorari has been denied.[2] So we deny the stay request as moot.

Turning now to the Division's motion for summary disposition, we believe that additional briefing is warranted as set forth herein. When determining whether remedial action,

---

1 *Stephen Condon Peters*, Advisers Act Release No. 5424, 2020 WL 58532 (Jan. 6, 2020).

2 *United States v. Peters*, No. 19-4718, 2021 WL 4099907 (4th Cir. Sep. 9, 2021), *cert. denied*, No. 21-6537 (U.S. Jan. 10, 2022).

such as an industry bar, is in the public interest in a follow-on proceeding under Advisers Act Section 203(f), the Commission must consider the question with reference to the underlying facts and circumstances of the case.[3] The factors that the Commission considers are: the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.[4] Such analysis must do more than "recite[], in general terms, the reasons why [a respondent's] conduct is illegal," but rather "devote individual attention to the unique facts and circumstances of th[e] case."[5]

In this instance, the Division supported its motion with copies of the superseding indictment, the jury verdict forms, and the judgment and amended judgment of restitution in the criminal proceeding.[6] These documents might, for instance, permit the Commission to conclusively find that Peters was convicted on the 20 counts recited in the judgment and amended judgment; that the elements for each of those offenses had been established beyond a reasonable doubt—e.g., that Peters was a registered investment advisor during the period that he committed fraudulent conduct and that his investment advisory clients were among the defrauded victims—and that Peters was ordered to pay restitution for his fraud in the amount of $15,161,624. That follows from the general principle that the respondent in a follow-on proceeding is precluded from collaterally attacking a prior civil or criminal judgment.[7]

But it is not clear that the documents submitted by the Division would, by themselves, permit the Commission to deem established the superseding indictment's *underlying factual allegations*. As the Commission has explained, the "allegations in an indictment" do not "automatically have preclusive effect" simply because the jury has following trial convicted the

---

3 *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

4 *See id.*; *see also Lawrence Allen Deshetler*, Advisers Act Release No. 5411, 2019 WL 6221492, at *2-3 (Nov. 21, 2019) (applying *Steadman* factors in follow-on proceeding).

5 *See McCarthy v. SEC*, 406 F.3d 179, 189 (2d Cir. 2005) (vacating and remanding suspension for failing to meet this standard).

6 *United States v. Stephen Condon Peters*, Crim. No. 5:17-cr-411-D (E.D.N.C.).

7 *See, e.g.*, *Gary McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at *3 (Apr. 23, 2015); *Marshall E. Melton*, Advisers Act Release No. 2151, 2003 WL 21729839, at *8-9 (July 25, 2003); *Ira William Scott*, Advisers Act Release No. 1752, 1998 WL 658791, at *3 (Sept. 15, 1998).

respondent in a "general verdict" that finds the respondent guilty of the counts in the indictment.[8] Here, the jury verdict forms do not reflect that the jury made specific findings regarding *how* Peters committed the violations at issue, aside from identifying certain items and transactions as proceeds of the offenses. Therefore, on the present record, we are uncertain what "facts the jury necessarily determined in returning [Peters's] conviction"—in other words, the facts "'distinctly put in issue and directly determined' in the criminal prosecution."[9]

Under the circumstances, the Commission would benefit from further briefing regarding the factual predicate for Peters's convictions, as well as the Division's arguments as to why these facts establish that an industry bar is warranted.[10] The Commission would also benefit from any further materials relevant to such matters or otherwise relevant to its public interest analysis, including, but not limited to, the jury instructions and any findings made by the district court in

---

[8] *McDuff*, 2015 WL 1873119, at *3. We do not have occasion to address the evidentiary record necessary to apply issue preclusion (i.e., collateral estoppel) in a case where the prior judgment was obtained by consent or plea. *Cf. Siris v. SEC*, 773 F.3d 89, 96 (D.C. Cir. 2014) (discussing preclusive effect of allegations in complaint where civil judgment entered by consent or stipulation); *United States v. Wainer*, 211 F.2d 669, 672 (7th Cir. 1954) (comparing preclusive effect of a criminal judgment upon a "general verdict of guilty" with a judgment obtained following a "plea of guilty to the indictment" where the "indictment to which the plea was entered" contained "substantive allegation of particular facts").

[9] *Hemphill v. Schott*, 141 F.3d 412, 416 (2d Cir. 1998) (quoting *Emich Motors Corp. v. General Motors Corp*, 340 U.S. 558, 568-69 (1961)).

[10] *See generally Shawn K. Dicken*, Exchange Act Release No. 90215, 2020 WL 6117716 (Oct. 16, 2020).

connection with sentencing or the disposition of any relevant pre- or post-trial motions.[11] Additionally, the Division should address whether the Commission should take official notice of the Fourth Circuit's decision affirming Peters's conviction and afford preclusive effect to the findings contained therein.[12]

Accordingly, it is ORDERED that the Division shall file a brief by September 30, 2022, not to exceed 5000 words, limited to addressing facts underlying Peters's convictions and the appropriateness of the sanctions sought. Any additional evidentiary materials shall be attached to the brief, which must contain specific citations to the evidence relied upon.[13]

It is further ORDERED that Peters may file a brief by November 14, 2022, not to exceed 5000 words, addressing the same matters to be addressed by the Division. If Peters files a response to this order, the Division may file a reply within 14 days after its service, not to exceed 2500 words.

---

[11] *See Emich Motors Corp*, 340 U.S. at 569 (explaining that the facts actually decided by general jury verdict of guilty can be determined by reviewing the record in the criminal proceeding, "including the pleadings, the evidence submitted, the instructions under which the jury arrived at its verdict, and any opinions of the court"); *Chisholm v. DLA*, 656 F.2d 42, 48-49 (3d Cir. 1981) (allowing agency to establish "which issues were litigated" by a conviction culminating in a general jury verdict by "introduction of the record of the criminal proceeding"); *Eric S. Butler*, Exchange Act Release No. 65204, 2011 WL 3792730, at *3 n.23 (Aug. 26, 2011) (relying on the indictment, together with jury instructions and findings made by the court in the criminal proceeding, to "establish the factual framework for [the Commission's] analysis" of sanctions); Restatement (Second) of Judgments § 27 cmt. f (stating that the determination of "what issues, if any, were litigated and determined by the verdict and judgment" should in the first instance be based on the "pleadings and other materials of record in the prior action"); DE 39 at 2, *SEC v. Peters*, Case 5:17-cv-00630-D (E.D.N.C. Mar. 22, 2021) (granting summary judgment on collateral estoppel grounds after "consider[ing] the entire record, including the sworn testimony at Peters's criminal trial").

[12] *See, e.g.*, *Lopez v. Pompeo*, 923 F.3d 444, 446 (5th Cir. 2019) ("If an appeal is taken, preclusion should attach to every ground that is in fact reviewed and affirmed by an appellate court . . . .") (cleaned up); Restatement (Second) of Judgments § 27 cmt. o.

[13] Rule of Practice 452, 17 C.F.R. § 201.452.

The parties' attention is directed to the most recent amendments to the Commission's Rules of Practice, which took effect on April 12, 2021 and which include new e-filing requirements.[14]

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

---

[14] *Amendments to the Commission's Rules of Practice*, Exchange Act Release No. 90442, 2020 WL 7013370 (Nov. 17, 2020), 85 Fed. Reg. 86,464, 86,474 (Dec. 30, 2020), https://www.govinfo.gov/content/pkg/FR-2020-12-30/pdf/2020-25747.pdf; *see also Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, https://www.sec.gov/efapdocs/instructions.pdf. The amendments also impose other obligations on parties to administrative proceedings such as a new redaction and omission of sensitive personal information requirement. *Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. at 86,465–81. We construe Peters's June 22, 2020 letter discussing his lack of access to email and to the Commission's website as a certification pursuant to Rules of Practice 150(c)(1) and 152(a)(2) that he will be unable to file or serve documents electronically for the duration of this proceeding. *See* 17 C.F.R. §§ 201.150(c)(1), .152(a)(2). Peters consequently may employ any method of filing or serving paper documents authorized by the Rules of Practice.