

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6417 / September 13, 2023

Admin. Proc. File No. 3-19617

In the Matter of

RANDALL S. GOULDING

ORDER REQUESTING SUBMISSIONS

On December 13, 2019, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Randall S. Goulding, pursuant to Section 203(f) of the Investment Advisers Act of 1940.¹ The OIP alleged that, on November 12, 2019, a federal district court permanently enjoined Goulding from violating Advisers Act Sections 206(1), 206(2), and 206(4), and Rule 206(4)-8 thereunder, and ordered Goulding to pay disgorgement and a civil penalty.² The Commission instituted these proceedings to determine whether the allegations are true and what, if any, remedial action is appropriate in the public interest against Goulding.³ The Division of Enforcement moved for summary disposition, which Goulding opposed.

While the parties were briefing the summary disposition motion, Goulding appealed the district court’s judgment. On July 7, 2022, the Seventh Circuit Court of Appeals issued an opinion affirming the district court’s findings of liability and the imposition of financial penalties and disgorgement, but holding that the district court’s injunction “could and should have forbidden with greater specificity what Goulding must not do.”⁴ Consequently, the Seventh Circuit vacated the injunction and remanded for the district court to issue a new injunction consistent with its opinion.⁵ In December 2022, the district court entered a new injunction against Goulding for violating Advisers Act Sections 206(1), 206(2), and 206(4), and Rule

¹ *Randall S. Goulding*, Advisers Act Release No. 5417, 2019 WL 6827197 (Dec. 13, 2019); *see also* 15 U.S.C. § 80b-3(f).

² *Goulding*, 2019 WL 6827197, at *1; *see also* 15 U.S.C. § 80b-6(1), (2), (4); 17 C.F.R. § 275.206(4)-8; Final Judgment as to Defendant Randall Goulding, *SEC v. Nutmeg Grp., LLC*, Case No. 09-CV-1775 (N.D. Ill. Nov. 12, 2019), ECF No. 1094.

³ *Goulding*, 2019 WL 6827197, at *2.

⁴ *SEC v. Goulding*, 40 F.4th 558, 563 (7th Cir. 2022).

⁵ *Id.*

206(4)-8.⁶ As a result, the Commission would be assisted in its determination of this review proceeding if the parties provided additional briefing on whether the vacation of the November 2019 injunction (and entry of the new injunction) has removed a statutory basis for maintaining this proceeding.⁷

Accordingly, the parties are ORDERED to file simultaneous briefs (not to exceed 5,000 words) by October 11, 2023, regarding any matters that the parties may believe pertinent as to what effect, if any, the Seventh Circuit's vacating the November 2019 injunction and the district court's entering a new injunction have on the continued viability of this proceeding. If either party takes the position that the Commission now lacks a statutory basis for maintaining this proceeding on the existing OIP, it would further aid the Commission if that party addresses what steps it proposes that the Commission should take.

It is further ORDERED that the parties may file simultaneous response briefs (not to exceed 2,500 words in length) by October 25, 2023. This order is not to be construed as expressing any view as to the Commission's resolution of these issues or the review proceeding generally.

⁶ Order of Permanent Injunctive Relief Against Defendant Randall Goulding, *SEC v. Goulding*, Case No. 09-CV-1775 (N.D. Ill. Dec. 20, 2022), ECF No. 1162 (enjoining Goulding from "(1) buying, selling or trading securities on behalf of an investment adviser or pooled investment vehicle; (2) managing securities investors for, or providing investment advice to, any person or entity . . . for compensation; and (3) providing consulting, valuation, compliance or other investment-related services to an investment adviser or pooled investment vehicle").

⁷ 15 U.S.C. § 80b-3(f) (cross-referencing Advisers Act Section 203(e)(4), 15 U.S.C. § 80b-3(e)(4)); *see also id.* § 80b-3(e)(4) (discussing injunctions).

The parties' attention is directed to the e-filing requirements in the Rules of Practice.⁸

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

Vanessa A. Countryman
Secretary

⁸ *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.sec.gov/rules/final/2020/34-90442a.pdf>; *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>.