

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100730 / August 15, 2024

Admin. Proc. File No. 3-20504

In the Matter of

MICHAEL VAX

ORDER REQUESTING ADDITIONAL BRIEFING AND MATERIALS

On August 30, 2021, the Securities and Exchange Commission issued an order instituting proceedings (“OIP”) against Michael Vax, pursuant to Section 15(b) of the Securities Exchange Act of 1934.¹ According to the OIP, Vax pleaded guilty in federal district court under an indictment alleging that from 2012 to 2013 he conspired to commit securities fraud through a scheme to manipulate the price of a penny stock. On June 10, 2022, the Division of Enforcement filed a motion for summary disposition requesting that the Commission bar Vax from participating in any penny stock offering. Vax opposes the motion.

Exchange Act Section 15(b)(6)(A) authorizes the Commission to suspend or bar a person from participating in an offering of penny stock if it finds that (1) the person was convicted of a crime involving the purchase or sale of any security, or conspiracy to commit any such offense, within ten years of the commencement of the proceeding; (2) the person was participating in a penny stock offering at the time of the misconduct; and (3) such a sanction is in the public interest.² We believe that the Commission would benefit from the parties providing additional briefing on these factors.

To support its motion, the Division attached the complaint, indictment, information, and judgment from the criminal proceeding against Vax.³ The first three of these documents (the complaint, indictment, and information) contain factual allegations about Vax’s participation in a pump-and-dump market manipulation scheme. But the record before the Commission contains

¹ *Michael Vax*, Exchange Act Release No. 92819, 2021 WL 3894484 (Aug. 30, 2021).

² 15 U.S.C. § 78o(b)(6)(A) (cross-referencing Exchange Act Section 15(b)(4), 15 U.S.C. § 78o(b)(4)); *see also id.* § 78o(b)(4)(B)(i) (discussing convictions involving the purchase or sale of securities).

³ *United States v. Michael Vax*, Case No. 1:13-cr-00410 (NRB) (S.D.N.Y. Aug. 15, 2013, Oct. 13, 2015, and Apr. 16, 2019, respectively).

no evidence addressing these allegations. Although the record also includes the judgment from the underlying criminal proceeding, that document indicates only that Vax pleaded guilty to securities fraud, conspiracy to commit securities fraud, conspiracy to commit extortion, and conspiracy to commit money laundering; and that he engaged in the essential elements of those offenses.⁴ The judgment does not provide a basis by which the Commission can establish any facts about Vax's conduct as it related to the elements of those offenses.⁵

Under the circumstances, the Commission would benefit from further development of the evidentiary record and additional briefing about the factual predicate for Vax's criminal convictions, as well as whether these facts establish the second and third elements under Exchange Act Section 15(b)(6)(A)—*i.e.*, was Vax participating in a penny stock offering at the time of his alleged misconduct,⁶ and is a penny stock bar in the public interest.⁷ Examples of evidentiary materials that may be helpful to the Commission's determination of these elements include transcripts of change of plea and sentencing hearings, sentencing memoranda, and other materials supporting findings made by the district court in connection with sentencing.

Accordingly, it is ORDERED that the Division shall submit, by September 16, 2024, any additional evidentiary materials it deems necessary to the Commission's consideration of the elements under Exchange Act Section 15(b)(6)(A), as well as a brief not to exceed 5,000 words explaining the relevance of those materials to its request and containing specific citations to the evidence relied upon.

⁴ See *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *8 (Feb. 13, 2009) (“In pleading guilty to 18 U.S.C. § 1001, Kornman admitted to each of its elements.”), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010); see also *McCarthy v. United States*, 394 U.S. 459, 466 (1969) (stating that “a guilty plea is an admission of all the elements of a formal criminal charge”).

⁵ Cf. *George McKown*, Advisers Act Release No. 6583, 2024 WL 1571554, at *2 (Apr. 10, 2024) (stating that “allegations in an indictment do not automatically have preclusive effect simply because . . . a jury convicted a respondent in a general verdict that finds the respondent guilty of the counts in the indictment”) (internal quotation marks omitted); *Karina Chairez*, Exchange Act Release No. 99732, 2024 WL 1093666 (Mar. 13, 2024) (requesting further briefing and materials where the record did not contain materials from the criminal proceeding showing that the respondent admitted all of the indictment's allegations when she pleaded guilty).

⁶ For example, although the Division submitted evidence that the stock at issue in this proceeding was a penny stock, the Commission would benefit from the parties addressing whether evidence establishes Vax's alleged participation in the offering of that stock.

⁷ See generally *Rapoport v. SEC*, 682 F.3d 98, 108 (D.C. Cir. 2012) (requiring “meaningful explanation for imposing sanctions”); *McCarthy*, 406 F.3d at 190 (stating that “each case must be considered on its own facts”).

It is further ORDERED that Vax may file, by October 15, 2024, a brief not to exceed 5,000 words and any additional evidentiary materials relevant to his opposition to the Division's motion. If Vax files a response to this order, the Division may file a reply within 14 days after its service, not to exceed 2,500 words.

The parties' attention is directed to the e-filing requirements in the Rules of Practice.⁸ We also remind the parties that any document filed with the Commission must also be served upon all participants in the proceeding and be accompanied by a certificate of service.⁹

Upon review of the filings in response to this order, the Commission will either direct further proceedings by subsequent order or issue a final opinion and order resolving the matter.

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

Vanessa A. Countryman
Secretary

⁸ See Rules of Practice 151, 152(a), 17 C.F.R. §§ 201.151, .152(a) (providing procedure for filing papers with the Commission and mandating electronic filing in the form and manner posted on the Commission's website); *Instructions for Electronic Filing and Service of Documents in SEC Administrative Proceedings and Technical Specifications*, <https://www.sec.gov/efapdocs/instructions.pdf>. Parties generally also must certify that they have redacted or omitted sensitive personal information from any filing. Rule of Practice 151(e), 17 C.F.R. § 201.151(e).

⁹ See Rule of Practice 150, 17 C.F.R. § 201.150 (generally requiring parties to serve each other with their filings); Rule of Practice 151(d), 17 C.F.R. § 201.151(d) ("Papers filed with the Commission . . . shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service, and the mailing address or email address to which service was made, if not made in person.").