

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 102406 / February 12, 2025

INVESTMENT ADVISERS ACT OF 1940  
Release No. 6852 / February 12, 2025

Admin. Proc. File No. 3-21963

In the Matter of  JOSEPH ANDREW PAUL
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ORDER DIRECTING ADDITIONAL BRIEFING AND MATERIALS

On June 12, 2024, the Securities and Exchange Commission issued an order instituting administrative proceedings (“OIP”) against Joseph Andrew Paul under Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.<sup>1</sup> On September 12, 2024, the Commission issued an order requiring Paul to show cause why he should not be deemed to be in default and why this proceeding should not be determined against him due to his failure to file an answer or otherwise defend the proceeding.<sup>2</sup> On October 16, 2024, the Division of Enforcement filed a motion for default and imposition of sanctions. To date, Paul has not made an appearance or otherwise defended this proceeding.

The Division’s motion requested that the Commission find Paul in default and bar him from the securities industry on the basis of the record and the allegations in the OIP. The motion recited that, on December 17, 2018, Paul pleaded guilty to three counts of securities fraud and was later sentenced to a term of imprisonment and other penalties. The motion further recited that, on March 17, 2023, a federal district court granted summary judgment in favor of the Commission in a related civil action, and the court enjoined Paul from violating the securities laws.

When determining whether remedial action under Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act is in the public interest, the Commission must consider the

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<sup>1</sup> *Joseph Andrew Paul*, Exchange Act Release No. 100323, 2024 WL 2958721 (June 12, 2024).

<sup>2</sup> *Joseph Andrew Paul*, Exchange Act Release No. 101002, 2024 WL 4170257 (Sept. 12, 2024).

question with reference to the underlying facts and circumstances of the case.<sup>3</sup> The factors that the Commission considers are the egregiousness of the respondents 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.<sup>4</sup> 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 the case."<sup>5</sup>

The Division supports its motion with documents from the two federal district court cases against Paul that involved the same underlying conduct. From the criminal proceeding, the Division provided the final judgment in a criminal case. This document indicates only that Paul pleaded guilty to certain offenses and thus establishes that he engaged in the essential elements of those offenses.<sup>6</sup> But it does not by itself provide a basis for giving issue-preclusive effect to the indictment's factual allegations.<sup>7</sup>

From the civil proceeding, the Division provided the Commission's complaint, a corrected order and judgment in a civil case, and a memorandum opinion by the court entering summary judgment in favor of the Commission and enjoining Paul from violation of the securities laws. But Paul defaulted in the civil proceeding, neither filing an answer nor contesting the Commission's motion for summary judgment nor otherwise participating in the action.<sup>8</sup> The Division has therefore not established a basis for giving issue-preclusive effect to the allegations in the civil complaint.<sup>9</sup>

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

<sup>4</sup> 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).

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

<sup>6</sup> See *Donald S. Laguardia, Jr.*, Advisers Act Release No. 6739, 2024 WL 4373378, at \*2 n.8, \*3 n.12 (Oct. 2, 2024).

<sup>7</sup> Cf. *George McKown*, Advisers Act Release No. 6583, 2024 WL 1571554, at \*2 (Apr. 10, 2024) (stating that "allegations in an indictment do not have preclusive effect simply because . . . a jury convicted respondent in a general verdict that finds the respondent guilty of the counts in the indictment") (internal quotation marks omitted).

<sup>8</sup> We express no view as to the circumstances under which an uncontested summary judgment motion might nevertheless result in a judgment with issue-preclusive effect. See generally 18A Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure* § 4444 & n.3 (2006) (explaining that preclusion may be "appropriate even if the summary-judgment motion went unopposed" if the party otherwise participated in the action); *In re Staggs*, 178 B.R. 767, 780-82 (Bankr. N.D. Ind. 1994), *aff'd*, 177 B.R. 92 (N.D. Ind. 1995).

<sup>9</sup> See *Don Warner Reinhard*, Exchange Act Release No. 61506, 2010 WL 421305, at \*4 (Feb. 4, 2010); see also *Jaswant Gill*, Advisers Act Release No. 5858, 2021 WL 4131427, at \*2

Lastly, the Division relies in part on the allegations of the OIP with respect to Paul's criminal conviction and civil injunction to support its request for sanctions. When a respondent defaults, the Commission may deem an OIP's allegations to be true.<sup>10</sup> But the OIP here recounts the allegations of the Commission's complaint; it does not independently allege that Paul engaged in particular misconduct.<sup>11</sup> The OIP's references to Paul's criminal conviction likewise recount only that Paul pleaded guilty to certain offenses, rather than making independent allegations regarding the specific acts to which Paul admitted in pleading guilty.

Under the circumstances, the Commission would benefit from further development of the evidentiary record—such as materials from the criminal proceeding showing the factual basis of Paul's guilty plea, like his change-of-plea colloquy or plea agreement—and additional briefing addressing the Division's arguments as to why sanctions are warranted. The Division should address each statutory element of the relevant provisions of Exchange Act Section 15(b) and Advisers Act Section 203(f).<sup>12</sup> The Division's brief should discuss relevant authority relating to the legal basis for and the appropriateness of the requested sanctions and include evidentiary support sufficient to make an individualized assessment of whether those sanctions are in the public interest.<sup>13</sup>

Accordingly it is ORDERED that the Division of Enforcement shall submit, as it deems necessary, any additional evidentiary materials that are relevant to its motion and determination of the public interest by March 14, 2025, as well as a brief not to exceed 5,000 words, explaining the relevance of those materials as to its request and the public interest and containing specific citations to the evidence relied upon.

It is further ORDERED that Paul may file a brief by April 14, 2025, not to exceed 5,000 words, addressing the same matters to be addressed by the Division. Paul's brief should also address why he has failed to file an answer previously or to otherwise defend this proceeding, and why the Commission should not find him to be in default as a result. Paul is reminded that when a party defaults, the allegations in the OIP will be deemed to be true and the Commission may determine the proceeding against that party upon consideration of the record without

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n.7 (Sept. 10, 2021) (“Because Gill’s injunction in the civil action was entered by default, we do not rely on any findings made in that action in determining whether Gill’s conduct warrants remedial sanctions.”).

<sup>10</sup> See Commission Rules of Practice 155(a), 220(f), 17 C.F.R. §§ 201.155(a), .220(f).

<sup>11</sup> See *Paul*, 2024 WL 2958721, at \*1 (relying on the Commission’s complaint and the entry of an injunction).

<sup>12</sup> See, e.g., *Bruce C. Worthington*, Advisers Act Release No. 6037, 2022 WL 1785718, at \*1 (June 1, 2022) (noting that “the Commission would benefit from being able to review some of the evidence supporting the [Division attorney’s] declaration” submitted after the initial request for additional information by the Commission).

<sup>13</sup> See generally *Rapoport v. SEC*, 682 F.3d 98, 108 (D.C. Cir. 2012) (requiring “meaningful explanation for imposing remedial sanctions”); *McCarthy*, 406 F.3d at 190 (stating that “each case must be considered on its own facts”).

holding an evidentiary hearing.<sup>14</sup> If Paul files a response to this order, the Division may file a reply within 14 days after its service.

The parties' attention is directed to the e-filing requirements in the Rules of Practice.<sup>15</sup> We also remind the parties that any document filed with the Commission must be served upon all participants in the proceeding and be accompanied by a certificate of service.<sup>16</sup>

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

Vanessa A. Countryman  
Secretary

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<sup>14</sup> Rules of Practice 155, 180, 17 C.F.R. § 201.155, .180.

<sup>15</sup> 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).

<sup>16</sup> See Rule of Practice 150, 17 C.F.R. § 201.150 (generally requiring parties to serve each other with 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 the service, the method of service, and the mailing address or email address to which service was made, if not made in person.").