

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940
Release No. 6926 / November 21, 2025

Admin. Proc. File No. 3-22307

In the Matter of EPIC CAPITAL WEALTH ADVISORS, LLC
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OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDING

Company filed an application to register with the Commission as an investment adviser, which an administrative law judge granted after holding a hearing. Administrative law judge did not make all findings required by statute to grant application. *Held*, that the proceeding is *remanded* to the administrative law judge to address statutory standard.

APPEARANCES:

David M. Anthony, President, for Epic Capital Wealth Advisors, LLC.

James P. McDonald, for the Division of Enforcement.

Appeal filed: August 15, 2025
Last brief received: October 1, 2025

On November 8, 2024, the Securities and Exchange Commission instituted proceedings under Section 203(c)(2)(B) of the Investment Advisers Act of 1940 to determine whether to deny the application of Epic Capital Wealth Advisors, LLC, to be registered as an investment adviser.¹ After holding a hearing, an administrative law judge issued an initial decision dismissing the proceeding and granting Epic Capital’s application.² The Division of Enforcement appealed that decision.

Advisers Act Section 203(c)(2)(B) provides that the Commission “shall grant” an application for registration if it “finds that the requirements of” Advisers Act Section 203 “are satisfied and that the applicant is not prohibited from registering as an investment adviser under” Advisers Act Section 203A. The relevant requirements of Section 203 are in Section 203(c)(1), which specifies information and documents that the Commission may require an applicant to disclose in or include with an application for registration as an investment adviser. Section 203A generally prohibits investment advisers from registering with the Commission unless they manage \$100 million in assets, advise specified clients, or qualify for an exemption. The Commission “shall deny” an application for registration “if it does not make” the two findings under Sections 203 and 203A. In granting Epic Capital’s application, the initial decision did not make either of those two findings. Accordingly, we remand this proceeding to the administrative law judge to complete the statutory inquiry and to amend the initial decision, as appropriate. In the absence of the two statutory findings, the ALJ must deny the application as required by Section 203(c)(2)(B).

I. Background

A. Anthony owns and controls Epic Capital.

Epic Capital is a limited liability company located and organized in Utah, where its sole owner and employee, David M. Anthony, has resided since at least 2021.³ Anthony also serves as Epic Capital’s President and Chief Compliance Officer. He formed the company in 2022 to be a “Registered Investment Advisory firm providing wealth management and money management services for affluent clients.”⁴ Neither Epic Capital nor Anthony is registered in

¹ *Epic Capital Wealth Advisors, LLC*, Advisers Act Release No. 6771, 2024 WL 4723204 (Nov. 8, 2024).

² *Epic Capital Wealth Advisors, LLC*, Initial Decision Release No. 1417, 2025 WL 2388717, at *10 (Aug. 8, 2025).

³ See Certificate of Organization of Epic Capital Wealth Advisors, LLC, *available from* <https://businessregistration.utah.gov/EntitySearch/OnlineEntitySearch> (search database for company name and filings); *Kalid Morgan Jones*, Exchange Act Release No. 80635, 2017 WL 1862331, at *1 n.3 (May 9, 2017) (taking official notice of website search results from state government database); Rule of Practice 323, 17 C.F.R. § 201.323 (governing official notice).

⁴ Certificate of Organization of Epic Capital Wealth Advisors, LLC, Article II (stating the purpose for which the company was organized).

any state as an investment adviser or investment adviser representative. Epic Capital has no clients or assets under management and is not currently soliciting clients.

Until 2022, Anthony was associated with Anthony Capital, LLC, then an investment adviser located, organized, and registered in Colorado.⁵ Anthony formed that company in 2006, and at its peak (around 2021), Anthony Capital had \$20 to \$30 million in assets under management (“AUM”). In 2022, however, the Securities Commissioner for the State of Colorado filed a six-count complaint against Anthony, Anthony Capital, and nine other entities Anthony controlled alleging that the defendants had violated Colorado law by engaging in securities and investment adviser fraud and failing to comply with licensing and registration requirements. A Colorado court subsequently entered a preliminary injunction against Anthony and appointed a receiver to manage the Anthony-controlled entities’ assets. After a pretrial mediation, Anthony reached a settlement with the Colorado Securities Commissioner under which Anthony neither admitted nor denied the Colorado complaint’s allegations and the parties agreed to file a stipulated injunction “barring” Anthony “from offering and selling securities” in Colorado for ten years. But because he later concluded that the injunction would also limit his ability to work in the securities industry outside Colorado, Anthony instead filed a motion to set aside the settlement. In April 2023, a court enforced that settlement over Anthony’s objection and enjoined Anthony and his codefendants for ten years from engaging in specified securities-related business in Colorado.⁶ The Colorado Securities Commissioner also suspended Anthony Capital’s investment adviser license, and Anthony’s investment adviser representative license, until 2033 and prohibited Anthony from having any clients in Colorado while suspended. In the hearing before the ALJ, Anthony characterized the Colorado litigation as a “scarlet letter.”

In December 2023, Anthony formed a new entity named Anthony Capital LLC in Utah and filed an application to register it in that state as an investment adviser.⁷ Anthony withdrew the application after the Utah Division of Securities notified him that it intended to commence an administrative action to deny the application.

⁵ See <https://www.sos.state.co.us/ucc/pages/biz/bizSearch.xhtml> (search results for Anthony Capital); <https://adviserinfo.sec.gov/firm/summary/152504> (Investment Adviser Public Disclosure (“IAPD”) database page for Anthony Capital); <https://adviserinfo.sec.gov/individual/summary/3068955> (IAPD database page for Anthony); *Leon Vaccarelli*, Exchange Act Release No. 102101, 2025 WL 27974, at *1 n.2 (Jan. 3, 2025) (taking official notice of IAPD records).

⁶ Specifically, the injunction prohibited Anthony and his codefendants from directly or indirectly “[o]ffering to sell or selling any securities or investments in” Colorado; “[m]aking recommendations or otherwise rendering advice to clients in” Colorado “regarding securities”; “managing securities accounts or portfolios for clients in” Colorado; and “[e]ngaging in business . . . in Colorado as a securities broker-dealer, sales representative, investment adviser, or investment adviser representative.”

⁷ <https://businessregistration.utah.gov/EntitySearch/OnlineEntitySearch> (search results for Anthony Capital LLC).

B. Epic Capital filed an application for registration with the Commission.

On September 24, 2024, Epic Capital filed an application to register as an investment adviser with the Commission. Advisers Act Section 203A generally prohibits investment advisers from registering with the Commission unless they have at least \$100 million in AUM or advise certain types of clients.⁸ Lacking any AUM or clients, Epic Capital initially sought to register with the Commission under the “internet adviser” exemption to Section 203A.⁹ After receiving Epic Capital’s application, Commission staff told Anthony in substance that for a firm to qualify as an internet adviser, the firm must provide “investment advice to all of its clients exclusively through an operational interactive website.”¹⁰ Because Anthony planned to advise at least some clients orally, he amended Epic Capital’s application to rely instead on an exemption for advisers that have a “reasonable expectation” of becoming eligible for Commission registration within 120 days (the “120-day rule”).¹¹ Epic Capital asserts that it intends to become eligible by reaching at least \$100 million in AUM within 120 days of becoming registered.

C. The Commission instituted this proceeding to determine if Epic Capital’s application should be denied.

In November 2024, the Commission instituted proceedings against Epic Capital to determine whether the firm’s investment adviser registration application “should be denied pursuant to Section 203(c)(2)(B) of the Advisers Act.”¹² As noted above, Section 203(c)(2)(B) provides that the Commission “shall grant” an application for registration as an investment adviser if it finds that “the requirements of [Section 203] are satisfied,”¹³ and “the applicant is not prohibited from registering as an investment adviser” under Section 203A.¹⁴ Conversely, the statute provides that the Commission “shall deny” registration if it does not make those two

⁸ 15 U.S.C. § 80b-3a; *see also Rules Implementing Amendments to the Investment Advisers Act of 1940*, Advisers Act Release No. 1633 (May 15, 1997), 62 Fed. Reg. 28,112, 28,113 (May 22, 1997), <https://www.govinfo.gov/content/pkg/FR-1997-05-22/pdf/97-13284.pdf> (discussing efficiencies associated with “making the states primarily responsible for smaller advisory firms and the Commission primarily responsible for larger firms”).

⁹ Advisers Act Rule 203A-2(e), 17 C.F.R. § 275.203A-2(e).

¹⁰ *Id.* § 275.203A-2(e)(1)(i).

¹¹ *Id.* § 275.203A-2(c). Epic Capital filed the amended version of its application at issue here on October 25, 2024.

¹² *Epic Capital*, 2024 WL 4723204, at *2; 15 U.S.C. § 80b-3(c)(2)(B). At the same time, the Commission also instituted proceedings against Anthony under Advisers Act Section 203(f) but later granted the Division’s motion to dismiss that proceeding. *David M. Anthony*, Advisers Act Release No. 6903, 2025 WL 2272101 (Aug. 8, 2025) (dismissal order).

¹³ *See, e.g.*, Advisers Act Section 203(c)(1), 15 U.S.C. § 80b-3(c)(1) (specifying certain information and documents that the Commission may require be included in an application for registration as an investment adviser); *see also* 17 C.F.R. §§ 275.203-1, 279.1 (together requiring filing of Form ADV to apply for registration with the Commission as an investment adviser).

¹⁴ 15 U.S.C. § 80b-3(c)(2)(B) (referencing 15 U.S.C. §§ 80b-3, 80b-3a).

findings *or* if it finds that the applicant’s “registration would be subject to suspension or revocation” if the applicant were so registered.¹⁵

D. The Commission denied the Division’s motion for summary disposition and set this proceeding for a hearing before an ALJ.

In December 2024, the Division filed a motion for summary disposition in which it argued that the Commission should deny Epic Capital’s application because Epic Capital would be subject to suspension or revocation of its registration if registered. The Division argued that suspension or revocation would be appropriate because Anthony—a person associated with Epic Capital¹⁶—had been enjoined from doing securities business in Colorado for ten years.¹⁷

In January 2025, the Commission denied the Division’s motion because it found that there were genuine issues of material fact relating to whether the public interest would require revocation or suspension of Epic Capital’s registration, were it registered. Among other things, the Commission noted that Anthony had disputed that he engaged in the misconduct alleged in the Colorado complaint and that the Division had not “identif[ied] any state court findings entitled to preclusive effect as to Anthony’s conduct.”¹⁸ The Commission therefore ordered that a hearing be conducted before an administrative law judge “for purposes of taking evidence on the questions set forth in Section III of the OIP.”¹⁹ Those questions included whether Epic Capital’s application for registration “should be denied pursuant to Section 203(c)(2)(B) of the Advisers Act.”²⁰ The Commission also ordered the ALJ to issue an initial decision.²¹

The Division filed a pre-hearing brief with the ALJ that argued, among other things, that Epic Capital was “clearly unlike” a registrant that “has a reasonable expectation that it will be eligible to register with the Commission within 120 days.” The Division also asserted that there was a “substantial risk” that Epic Capital’s failure to become eligible during that period could

¹⁵ *Id.* (referencing Advisers Act Section 203(e), 15 U.S.C. § 80b-3(e)).

¹⁶ Advisers Act Section 202(a)(17), 15 U.S.C. § 80b-2(a)(17) (defining “person associated with an investment adviser” to include “any partner, officer, or director of,” “or any person directly or indirectly controlling,” “such investment adviser”).

¹⁷ *See* Advisers Act Section 203(e), 15 U.S.C. § 80b-3(e) (authorizing the Commission to suspend or revoke an investment adviser’s registration if it finds, on the record after notice and opportunity for hearing, that a person associated with the adviser has been enjoined “from engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security” and that suspension or revocation is in the public interest).

¹⁸ *Epic Capital Wealth Advisors, LLC*, Advisers Act Release No. 6834, 2025 WL 296102, at *2 (Jan. 23, 2025).

¹⁹ *Id.*

²⁰ *Epic Capital*, 2024 WL 4723204, at *2.

²¹ *Epic Capital*, 2025 WL 296102, at *3.

leave it “in operation and managing client funds without any federal- or (realistic) state-registration options.”

Before these proceedings were instituted, Anthony sent Commission staff an email asserting that he had “over \$200m in cumulative assets from interested individuals that have approached me about a potential advisory relationship from 10 plus states.”²² Anthony later produced a list of more than 3,000 potential clients in response to a discovery request, and he testified at the hearing that he had “been in front of hundreds of millions of dollars of monies of folks that wanted and were inquiring about Investment Management Services.” Anthony admitted, however, that these leads were “people [who] have opted in to a sales funnel . . . to get more information about how they can reduce their tax liability,” from a tax planning company that Anthony operates, and that the individuals may not have even heard of Epic Capital. Anthony further explained that Epic Capital “is not soliciting clients right now, it’s not operating as an investment adviser, it doesn’t have the license to do so, [and] it’s not positioning itself as such.”

Anthony also testified that if Epic Capital’s application were approved, he would activate a website for it, begin contacting potential clients, and pursue “[a]nything [legal] that would get me to \$100 million.” Anthony testified that he believed he could timely do so because he previously raised close to \$50 million in six months. Anthony did not specify the context in which he claimed to have done so, however, and he also testified that he never managed more than \$20-30 million at Anthony Capital, which he formed in 2006.

E. The ALJ issued an initial decision granting Epic Capital’s registration, and the Division of Enforcement appealed that decision.

After the hearing, the ALJ issued an initial decision finding that the Division had failed to show that the public interest required denial of Epic Capital’s application and granting Epic Capital’s registration for that reason.²³ The initial decision found that, although the Division had “raise[d] serious issues regarding Anthony’s fitness to serve in a fiduciary role,” Epic Capital had not received sufficient notice of the Division’s public interest arguments. The initial decision also rejected the Division’s argument that Epic Capital was “unlikely” to reach \$100 million in AUM in 120 days because, the initial decision concluded, that inquiry was outside the scope of the public interest and because Anthony had testified that he would

²² We grant the Division’s unopposed motion to supplement the record to include this email, on which Anthony also relies. We find that the email is material and that there were reasonable grounds for not previously adducing it because the Division offered it in response to the supplemental briefing order discussed above. *See* Rule of Practice 452, 17 C.F.R. § 201.452.

²³ *Epic Capital*, 2025 WL 2388717, at *9; *see also id.* at *7 (“Under Section 203(c)(2)(B), the Commission may deny an application for registration as an investment adviser if it finds (1) that any person associated with the applicant has been enjoined from acting as an investment adviser, or from engaging in any conduct or practice in connection with that activity [as contained in Section 203(e)], and (2) that such action is in the public interest.”) (quoting with modification, *Epic Capital*, 2025 WL 296102, at *1 (Commission order)).

withdraw Epic Capital’s registration if it did not timely reach the required AUM threshold.²⁴ In doing so, the initial decision did not consider, outside its analysis of the public interest, Epic Capital’s reliance on the 120-day rule or address the reasonableness of Epic Capital’s expectations that it could timely raise the minimum AUM. The initial decision also did not make findings required by Advisers Act Section 203(c)(2)(B) to grant Epic Capital’s application for registration, i.e., that the requirements of Section 203 are satisfied and that Epic Capital is not prohibited from registering as an investment adviser under Section 203A.

The Division appealed the initial decision.²⁵ Because the initial decision did not make all findings required under Section 203(c)(2)(B) to grant Epic Capital’s application for registration, the Commission directed the parties to address those issues.²⁶ Among other things, the Commission requested briefing on whether the initial decision’s rejection of the Division’s public interest argument—if accepted—would provide a sufficient basis, standing alone, to grant Epic Capital’s application for registration.²⁷ The Commission also requested that the parties further address whether Epic Capital has a “reasonable expectation” of reaching at least \$100 million in AUM in 120 days.

II. Analysis

The initial decision found that the Division failed to establish that, if Epic Capital were registered as an investment adviser, Epic Capital would be subject to revocation or suspension of its registration under Advisers Act Section 203(e). On this basis, the initial decision dismissed this proceeding and granted Epic Capital’s application.

The initial decision did not, however, complete the analysis required by Section 203(c)(2)(B) to grant Epic Capital’s application because it did not find that Section 203’s other requirements were satisfied (that Epic Capital’s application provided the information and documents required by Section 203(c)(1)) and that Epic Capital was not prohibited from registering with the Commission under Section 203A. Without both findings, an application for

²⁴ *Epic Capital*, 2025 WL 2388717, at *9; *see also* 17 C.F.R. § 275.203A-2(c)(3) (requiring registrants relying on 120-day rule to withdraw registration within 120 days).

²⁵ *See Epic Capital Wealth Advisors, LLC*, Advisers Act Release No. 6910, 2025 WL 2462918 (Aug. 26, 2025) (order granting petition for review and scheduling briefs); *see also* Rule of Practice 411(d), 17 C.F.R. § 201.411(d) (“If a party . . . timely files a petition for review . . . , the initial decision shall not become final as to that party . . .”).

²⁶ *See* Rule of Practice 411(b), 17 C.F.R. § 201.411(b) (providing that in a proceeding for review of an initial decision, “[o]n notice to all parties [] the Commission may, at any time prior to issuance of its decision, raise and determine any other matters that it deems material, with opportunity for oral or written argument thereon by the parties”).

²⁷ *See Epic Capital Wealth Advisors, LLC*, Advisers Act Release No. 6920, 2025 WL 2674069 (Sept. 17, 2025) (supplemental briefing order), *initial briefing date extended by* Advisers Act Release No. 6921, 2025 WL 2709348 (Sept. 22, 2025).

registration must be denied. We remand this proceeding to the ALJ to further apply the statutory standard and to amend as appropriate the initial decision.²⁸

A. The ALJ should address the statutory and regulatory framework.

In remanding, we express no opinion about whether Epic Capital provided the information and documents required by Section 203(c)(1) or whether Section 203A prohibits Epic Capital from registering. We note, however, that Epic Capital does not dispute that it has no clients or assets under management and that, as a result, Section 203A ordinarily would prohibit it from registration with the Commission as an investment adviser.²⁹ Epic Capital asserts that it qualifies for an exemption to this prohibition because it has a reasonable expectation that it will reach at least \$100 million in AUM within 120 days of its registration becoming effective and satisfies the other requirements of the 120-day rule.³⁰ When adopting this exemption, the Commission gave an example of circumstances constituting a reasonable expectation: “[T]he Commission anticipated that [the 120-day rule] would be used primarily by persons who start their own advisory firms after having been employed by or affiliated with other advisers, and that have received an indication from clients with substantial assets that they will transfer those assets to the management of the newly formed adviser.”³¹

²⁸ See Rule of Practice 411(a), 17 C.F.R. § 201.411(a) (authorizing the Commission to “remand for further proceedings, in whole or in part, an initial decision”).

²⁹ 15 U.S.C. § 80b-3a(a)(1) (prohibiting investment advisers from registering with the Commission unless they have at least \$25 million in AUM or are advisers to registered investment companies); *id.* § 80b-3a(a)(2)(A) (prohibiting investment advisers with between \$25 and \$100 million in AUM from registering with the Commission except under limited circumstances not at issue here); *id.* § 80b-3a(c) (providing the Commission with exemptive authority where application of prohibition on registration “would be unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of” Section 203A).

³⁰ Advisers Act Rule 203A-2(c)(1), 17 C.F.R. § 275.203A-2(c)(1) (reasonable expectation requirement). The 120-day rule also requires an investment adviser to satisfy several other requirements: immediately before the adviser registers, it “is not registered or required to be registered with the Commission or a[ny] state securities authority,” *id.*; the adviser indicates on its application that it will withdraw its registration 120 days after its registration becomes effective if Advisers Act Section 203A would prohibit it from registering with the Commission, *id.* § 275.203A-2(c)(2); and, if applicable, the adviser withdraws its registration by the 120th day, *id.* § 275.203A-2(c)(3).

³¹ *Rules Implementing Amendments to the Investment Advisers Act of 1940*, 62 Fed. Reg. at 28,118 n.68. Given the text of the 120-day rule, the Commission has recognized that the exemption could apply in other circumstances and is not limited to newly formed advisers. *Id.*; *Form ADV and Investment Advisers Act Rules*, Advisers Act Release No. 4509 (Aug. 25, 2016), 81 Fed. Reg. 60,418, 60,436 (Sept. 1, 2016), <https://www.govinfo.gov/content/pkg/FR-2016-09-01/pdf/2016-20832.pdf> (deleting the phrase “Newly Formed Adviser” from Form ADV because the 120-day rule “does not only apply to” advisers that have been “newly created as corporate or other legal entities”).

Whether an applicant has agreed to withdraw registration if it does not qualify for Commission registration in 120 days is a separate requirement from whether an applicant has a “reasonable expectation” that it can so qualify.³² The common definition of “expect” is to consider “probable” or “likely to happen.”³³ The ALJ should thus consider and address whether it is reasonable to conclude that it is more likely than not that Epic Capital will reach at least \$100 million in AUM within 120 days of its registration becoming effective.

In determining whether Epic Capital has a reasonable expectation of reaching \$100 million in AUM in 120 days, the ALJ should consider that Epic Capital has no current clients or AUM and that Anthony agreed at the hearing that he does not “intend to take or transfer or resume any of Anthony Capital’s clients.” The ALJ should further address Anthony’s likelihood of attracting new substantial assets to Epic Capital for management, which analysis may address such factors as whether Epic Capital is able to identify persons who collectively could reasonably be expected to entrust sufficient assets to Epic Capital to secure at least \$100 million in AUM in 120 days or whether it has a concrete plan to meet that goal.

The ALJ should further consider the relevance of Anthony’s present and past circumstances to its future ability to raise AUM. For example, Anthony testified that, although he operated Anthony Capital for approximately 15 years, it never managed more than \$20-30 million.³⁴ And to the extent that Epic Capital relies on Anthony’s having raised money in offerings made under Rule 506(c) of Regulation D, the ALJ should consider Anthony’s admission in his briefing from the Colorado proceeding that, because he has been enjoined, he “would not be permitted to form and raise funds” in Rule 506 offerings.³⁵

³² Compare Advisers Act Rule 203A-2(c)(1), 17 C.F.R. § 275.203A-2(c)(1) (containing reasonable expectation requirement) with Advisers Act Rule 203A-2(c)(2) & (3), 17 C.F.R. § 275.203A-2(c)(2) & (3) (containing requirements relating to withdrawal of registration by applicants that are prohibited by Section 203A from registering with the Commission on the 120th day after the applicant’s registration under the 120-day rule becomes effective).

³³ *Expect*, MERRIAM-WEBSTER ONLINE DICTIONARY, <https://www.merriam-webster.com/dictionary/expect> (defining expect as “to consider probable or certain”); *Expect*, BLACK’S LAW DICTIONARY (6th ed. 1990) (defining expect as “likely to happen”). In its briefing, Epic Capital defines expectation as “[t]o consider probable.”

³⁴ Cf. *David Henry Disraeli*, Exchange Act Release No. 57027, 2007 WL 4481515, at *12 (Dec. 21, 2007) (finding that investment adviser lacked a reasonable expectation of qualifying for Commission registration within 120 days when, among other things, the maximum AUM managed by its principal at any point in his career was less than one half the AUM then required for registration), *aff’d*, 334 F. App’x 334 (D.C. Cir. 2009) (per curiam).

³⁵ See 17 C.F.R. § 230.506(d)(1)(ii) (containing disqualification provisions relevant to enjoined persons). We take official notice of the contents of Anthony’s brief from the Colorado proceeding challenging the Colorado settlement. See *Keith Patrick Sequeira*, Exchange Act Release No. 85231, 2019 WL 995508, at *1 n.2 (Mar. 1, 2019) (taking official notice of state court records).

In determining whether Epic Capital has a reasonable expectation of reaching \$100 million in AUM in 120 days, the ALJ should also address whether Anthony's regulatory history may hinder Epic Capital's ability to raise assets to manage. Among other things, information about the Colorado litigation—which Anthony considers a “scarlet letter”—is publicly available, including the state's filing the six-count fraud action against him and his companies; the state's enjoining him from engaging in the securities business in Colorado; and the state's appointment of a receiver to manage Anthony Capital's and the other Anthony entities' assets.³⁶ The ALJ should also consider other effects of the Colorado litigation, including that, as Anthony testified, he no longer holds certified financial planner or retirement management analyst designations and no longer broadcasts what he testified was a “very popular” syndicated radio show that he used to bring clients to Anthony Capital.

The ALJ should similarly consider Anthony's recent track record of returns and whether it may limit his ability to raise assets to manage. For example, former investors in his entities testified at the hearing that they expect to receive less than 15% of their initial investments back from the Colorado receivership. According to Anthony, “hundreds” of these investors lost “their life savings.” Anthony also conceded that another Anthony entity lost \$5 million in investor funds by investing in what Anthony now believes was a fraudulent scheme.

B. The ALJ should address Epic Capital's arguments.

Before issuing an amended initial decision, the ALJ should offer the parties an opportunity to submit additional briefing limited to the remanded issues. We identify below, however, certain arguments that Epic Capital made to us in supplemental briefing.

On remand, the ALJ should address Epic Capital's argument that it reasonably expects to reach \$100 million in AUM within 120 days by securing 50 clients with \$2 million each. Epic Capital argues that Anthony's proximity to wealthy potential clients in Park City, Utah, facilitates its ability to do so. The ALJ should consider, for example, whether Epic Capital has identified any residents of Park City (or elsewhere) who have committed to transferring assets to it for management, whether physical proximity to wealthy individuals makes it likely that an investment adviser will retain them as clients, and that Anthony admitted that he is not soliciting any clients. The ALJ should also consider that Epic Capital may be limited in its ability to attract Utah clients because Anthony (Epic Capital's sole employee) is not registered in the state as an investment adviser representative and testified that he does not intend to apply for that registration and that staff at the Utah Division of Securities told him that he “can't be an investment adviser representative” in Utah because his “license was suspended in” Colorado.³⁷

³⁶ See, e.g., <https://www.anthonycapitalreceivership.com/>. The Colorado litigation is also discussed in Anthony's IAPD record. See *supra* note 5.

³⁷ See Advisers Act Section 203A(b)(1)(A), 15 U.S.C. § 80b-3a(b)(1)(B) (providing that “a State may license, register, or otherwise qualify any investment adviser representative who has a place of business located within that State”); *Utah Licensing Guide, Federal vs. State Regulation*, <https://securities.utah.gov/licenses/utah-licensing-guide/> (discussing licensing of investment adviser representatives associated with “federal covered advisers”).

The ALJ should additionally consider Epic Capital’s argument that it is likely to reach \$100 million in AUM based on “advances in technology.” Among other things, the ALJ should consider whether the record shows that Epic Capital possesses these technologies and whether they would make it reasonable to expect that Epic Capital will timely raise at least \$100 million of AUM.

C. Considering whether Section 203A prohibits Epic Capital’s registration is appropriate.

We recognize that Epic Capital argues that “Anthony is innocent of the allegations presented by the State of Colorado,” and that the firm’s application should thus be granted because it has satisfied the “requirements . . . upon which this hearing was initially based.” Epic Capital also implies that determining whether it has a reasonable expectation that it will qualify for registration within 120 days subjects its application to greater scrutiny than other applications submitted under the 120-day rule have received.

We do not agree with these assertions. The Commission has not hesitated, where appropriate, to conclude that an investment adviser did not qualify for an exemption to Section 203A under the 120-day rule.³⁸ The order instituting proceedings in this proceeding notified Epic Capital that the Commission would determine whether Epic Capital’s application “should be denied pursuant to Section 203(c)(2)(B).” That subsection specifies that, to grant registration, the Commission must find, among other things, that an “applicant is not prohibited from registering as an investment adviser under” Section 203A. Conversely, if the Commission cannot make this finding, Section 203(c)(2)(B) requires the Commission to deny registration. Because it has no clients and no AUM, Epic Capital is prohibited from registering unless it meets an exemption. The initial decision did not make the findings required by Congress to approve Epic Capital’s application. Rather than deny Epic Capital’s application for that reason, we instead remand this proceeding to the ALJ to complete the analysis required by Section 203(c)(2)(B).

* * *

For the reasons above, we remand to the administrative law judge to determine, following additional briefing, whether the record provides the necessary basis to find that Section 203’s requirements are satisfied and that Epic Capital’s registration is not prohibited under Section 203A. In preparing an amended initial decision explaining her conclusions, we trust that the ALJ will act with alacrity as she did in preparing the initial decision from which the Division appealed. Our remand does not include the Division’s public interest arguments, which the ALJ

³⁸ *Disraeli*, 2007 WL 4481515, at *12; *see also Anthony Fields*, Advisers Act Release No. 4028, 2015 WL 728005, at *16 n.99 (Feb. 20, 2015) (finding that respondent would not have been entitled to an exemption under the 120-day rule had the respondent invoked the rule).

has already addressed. As noted above, a failure by the Division to show that Epic Capital's application should be denied based on those arguments would not, by itself, provide a basis to grant Epic Capital's application.

An appropriate order will issue.

By the Commission (Chairman ATKINS and Commissioners PEIRCE and UYEDA; Commissioner CRENSHAW dissenting).

Vanessa A. Countryman
Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 6926 / November 21, 2025

Admin. Proc. File No. 3-22307

In the Matter of

EPIC CAPITAL WEALTH ADVISORS, LLC

ORDER REMANDING PROCEEDING TO ADMINISTRATIVE LAW JUDGE

On the basis of the Commission's opinion issued this day, it is

ORDERED that this proceeding is remanded to administrative law judge Carol Fox Foelak for appropriate further proceedings consistent with this opinion and preparation of an amended initial decision.

By the Commission.

Vanessa A. Countryman
Secretary