UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19577

In the Matter of

HOWARD J. ALLEN III,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT HOWARD J. ALLEN III AND MEMORANDUM OF LAW IN SUPPORT

DIVISION OF ENFORCEMENT
Alexander M. Vasilescu
Richard Hong
Karen M. Lee
Securities and Exchange Commission
New York Regional Office
200 Vesey Street, Suite 400
New York, New York 10281
Telephone: (212) 336-0956 (Hong)
hongr@sec.gov

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Pursuant to Rule 250(b) of the Securities and Exchange Commission's ("SEC" or "Commission") Rules of Practice, the Division of Enforcement ("Division") respectfully moves for summary disposition against Respondent Howard J. Allen III ("Allen"). This proceeding is a follow-on proceeding arising from a civil securities antifraud injunction imposed against Allen, an owner of a registered broker-dealer and a registered representative, after a jury trial and full briefing on remedies, by the United States District Court for the Southern District of New York. Because Allen has been enjoined and the sole determination concerns the appropriate sanction against him under Section 15(b)(6)(A) of the Securities Exchange Act of 1934 (the "Exchange Act"), this motion for summary disposition should be granted, and full industry (collateral) bars should be imposed against him.

I. Procedural History and Factual Background

Allen has been a registered representative since 1991 and has been the indirect owner and a registered representative of registered broker-dealer Portfolio Advisors Alliance, Inc. ("PAA")

since January 2009 through his ownership of Allen Partners Capital Group LLC, which directly owns PAA. Order Instituting Administrative Proceedings ("OIP"), File No. 3-19577, Section II, at ¶ 1. Allen holds several licenses in the securities industry, including Series 7, 24, 63, and 65. *Id.* From at least March 2011 to December 2013, PAA was the selling agent for a private placement offering for American Growth Funding II, LLC ("AGF II"). *Id.* Allen, through his broker dealer PAA, sold AGF II securities in that private placement offering. *Id.* at ¶ 3.

In February 2016, the Commission charged, among others, PAA, Allen, and Kerri L. Wasserman ("Wasserman"), PAA's President/Chief Compliance Officer, with securities fraud for raising approximately $8.6 million from at least 85 investors through material misrepresentations and omissions in connection with AGF II's offering.[1] *See* Complaint in *SEC v. American Growth Funding II, LLC*, No. 16-cv-828 (KMW) (S.D.N.Y.) (the "Civil Action"). *See generally* Division Ex. 1 (Civil Action's Docket Sheet)[2] and Division Ex. 2 (Complaint, DE # 6).[3] In addition, Allen, as PAA's principal, was charged as a controlling person for violations of PAA under the antifraud provisions of the securities laws (Sections 17(a)(1), (2) and (3) of the Securities Act of 1933 ["Securities Act"] and Sections 10(b) of the Exchange Act and Rule 10b-5(a), (b) and (c) thereunder). Division Ex. 2 at ¶¶ 8, 99-101.

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[1] AGF II and Ralph C. Johnson ("Johnson"), Chief Executive Officer of AGF II, were also charged, but they settled prior to trial. *See* Division Ex. 1 (docket sheet), DE # 6, 203, 205-206.

[2] All Division exhibits are appended to the Declaration of Richard Hong, filed concurrently herewith.

[3] Under Rule 323, a hearing officer may take notice of "any material fact which might be judicially noticed by a district court of the United States..." 17 C.F.R. § 201.323. Thus, official notice may be taken of the Commission's public official records and of the docket reports, court orders, official trial transcripts, admitted trial exhibits, and other court filings by the parties in the Civil Action.

The gravamen of the Complaint against Allen is that from at least March 2011 to December 2013, Allen, through PAA, sold AGF II securities in a private placement offering using offering documents (private placement memoranda or "PPMs") that falsely stated that AGF II's financial statements had previously been audited and would continue to be audited at the end of each fiscal year. OIP, Section II, at ¶ 3 (summarizing the Complaint's allegations against Allen). In addition, Allen learned by at least May or June 2012 that the PPMs were false, but continued to provide the false documents to investors for more than a year thereafter to solicit sales of AGF II securities, without disclosing to any investors that no audits had been performed or that the representation in the PPMs regarding an audit was false. *Id.*

On April 30, 2019, a jury trial commenced against Allen, Wasserman, and PAA in the Southern District of New York.[4] Division Ex. 1 (Docket Sheet) at DE # 255 (minute entry). The SEC called 11 witnesses, including Allen, Wasserman, and Johnson of AGF II, and introduced 74 exhibits in his case-in-chief (including stipulations and deposition testimony of AGF II investor John McGowan). *See generally* Division Ex. 3 (Trial Transcript or "Trial Tr.") at 70-92 (Robert Spiegel), at 128-156 (Peter Pak), at 159-202 (Lawrence Sucharow), at 214-234 (Stuart Bender), at 261-302 (Johnson), at 303-366 (Wasserman), at 367-416, 426-452 (Allen), at 452-473, 477-480 (Thomas Feretic), at 480-528 (SEC expert Robert Lowry), and 539-577 (SEC expert Harris Devor) and Division Ex. 4 (containing all SEC Trial Exhibits) (all transcripts and exhibits attached hereto as Division exhibits).

For his defense case, Allen called eight witnesses, including attorneys Andrew Russell and Timothy Kahler, as well as Johnson, Allen, and Wasserman, and introduced 43 exhibits (including stipulations and deposition testimony of defense expert Richard Chase). Division Ex. 3 (Trial Tr.)

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[4] Allen, Wasserman, and PAA were (and are) jointly represented by the same counsel.

at 579-594, 655-691 (Johnson), at 697-727 (Kahler), at 740-758, 1011-1024 (Jennie Pell), at 759-783 (Wasserman), at 785-792, 821-863, 873-893, 1024-1041 (Allen), at 894-903 (Seymour Weinberg), at 981-1011(Russell). In addition, the District Court (Judge Kimba M. Wood) allowed, outside the presence of the jury, additional *voir dire* examination of a witness (Russell) to determine the admissibility of his testimony. Division Ex. 3 (Trial Tr.) at 624-649.

On May 15, 2019, the jury returned verdicts against Allen, Wasserman and PAA, finding them liable for all violations against them. Division Ex. 1 (Docket Sheet) at DE # 279 (entry of the jury verdicts) (minute entry); Division Ex. 3 (Trial Tr.) at 1231-35 (reading of the jury verdicts).

After full briefing by the parties, the District Court, which presided over the trial, issued an Opinion & Order on remedies on September 24, 2019. Division Ex. 5 (Opinion & Order) (DE # 313). With respect to Allen, the Court granted a permanent injunction, enjoining him from future violations of the antifraud provisions of the securities laws; awarding disgorgement in the amounts of $860,000, plus $199,721.28 in prejudgment interest, from PAA and Allen, jointly and severally, and $166,427 plus $38,649.97 in prejudgment interest, from Allen alone; and imposing a $120,000 civil penalty against Allen. *Id.* at 9.

The District Court made several findings in its Opinion & Order. As to the issuance of a permanent injunction, the Court held that:

> [A] permanent injunction is warranted. The jury found Defendants [PAA, Allen and Wasserman] liable for violations of the antifraud provisions of the securities laws, which required a finding that Defendants acted with *scienter*. The violations continued over a period of years, and were not simply an isolated occurrence of bad judgment. As Defendants' opposition to the requested relief demonstrates, they continue to dispute their blame for the illegal conduct. Because Allen and Wasserman are registered broker-dealers at PAA, which has continued to operate in the securities industry, Defendants are in a position where future violations could be anticipated. Finally, the injunction is not onerous because it merely requires Defendants not to break the law.

Division Ex. 5 (Opinion & Order) at 2 (citation omitted).

Next, with respect to disgorgement, the District Court found that PAA and Allen should be jointly and severally liable for disgorgement of ill-gotten gains because "Allen failed to establish a 'good faith' defense, plainly 'collaborated' in PAA's unlawful conduct, and profited from that collaboration." *Id.* at 6. In addition, the Court noted, "Allen owned PAA, and sold the majority of all AFG [*sic*] II investments." *Id.*

Finally, as to civil penalties, the District Court explained that the following penalty factors – the egregiousness of the defendants' conduct; the degree of the defendants' *scienter*; and the recurrence of the defendants' conduct – "weigh in favor of imposing significant penalties." *Id.* at 7. And, while ultimately imposing smaller penalties, the Court found that the actions of Allen and co-defendants PAA and Wasserman had met the standard for imposing "Third Tier" penalties for violations involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement that also directly or indirectly resulted in substantial losses or created a significant risk of substantial losses. *Id.* Accordingly, the Court entered a Final Judgment, including a permanent injunction, against Allen and PAA on October 1, 2019. Division Ex. 6 (Final Judgment as to Allen and PAA) (DE # 319).[5]

On October 7, 2019, the Commission initiated this follow-on OIP pursuant to Section 15(b) of the Exchange Act against Allen.[6] File No. 3-19577. On October 25, 2019, Allen served his Answer to the OIP ("Answer"). Notably, in his Answer, Allen did not deny (1) that he has been enjoined from future violations of the antifraud provisions of the securities laws; and (2) that at all

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[5] Allen claims that he will appeal to the Second Circuit. Answer at 3 n.5. To date, however, it does not appear that Allen has done so.

[6] On the same day, the Commission also initiated two other related proceedings pursuant to Section 15(b) of the Exchange Act against PAA and Wasserman. *See* File Nos. 3-19576, 3-19578.

relevant times, he was associated with PAA, a registered broker-dealer, as its owner and a registered representative (salesperson). Answer at 1-2, 14.

Pursuant to Rule 230(d) of the Commission Rules of Practice, the parties conferred and agreed that discovery in this proceeding is the record in the Civil Action. Division Ex. 7 (November 18, 2019 email exchange between counsel for the Division and Allen regarding discovery after an earlier prehearing conference). As such, the parties agreed that discovery has been made available to each other for inspection and copying in this proceeding. *Id.*[7]

II. The Standard for Summary Disposition

Rule 250(b) of the Commission's Rules of Practice, provides that after a respondent's answer has been filed and documents have been made available to the respondent for inspection and copying, a party may move for summary disposition of any or all allegations of the OIP. 17 C.F.R. § 201.250(b). A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. *Id.*

The Commission has repeatedly upheld the use of summary disposition in cases such as this, where the respondent has been enjoined and the sole determination concerns the appropriate sanction. *See, e.g., Gary M. Kornman*, Exchange Act Rel. No. 59403, 2009 WL 367635, at *10 & n. 58 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010) (collecting cases). Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare." *Efim Aksanov*, Initial Dec. Rel. No. 1000, 2016 WL 1444454, at *2 (Apr. 12, 2016) (citing *John S. Brownson*, Exchange Act Rel. No.

[7] According to the OIP, this proceeding against Allen is deemed to be under the 75-day timeframe specified in Rule of Practice 360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i). OIP, Section IV, at unmarked page 3.

46161 (July 3, 2002), 55 S.E.C. 1023, 1028 n.12, *petition for review denied*, 66 F. App'x 687 (9th Cir. 2003)).

Further, "[f]ollow-on proceedings are not an appropriate forum to revisit the factual basis for, or legal challenges to, an order issued by a federal court, and challenges to such orders do not present genuine issues of material fact in our follow-on proceedings." *John W. Lawton*, Investment Adviser Act Rel. No. 3513, 2012 WL 6208750, at *5 (Dec. 13, 2012). Thus, the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent, including a proceeding in which an injunction was entered after trial. *See James E. Franklin*, Exchange Act Rel. No. 56649, 2007 WL 2974200, at *4 (Oct. 12, 2007). Finally, any pending appeal of an underlying judgment does not prevent the Commission from exercising its jurisdiction in a follow-on administrative proceeding. *James E. Franklin*, 2007 WL 2974200, at *4 n.15.

III. Summary Disposition Is Proper in This Follow-on Proceeding

Allen should be barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization ("NRSRO"). Section 15(b)(6)(A) of the Exchange Act authorizes such industry (collateral) bars against a person if: (1) at the time of the alleged misconduct, the person was associated with a broker or dealer; (2) the person has been enjoined from any action, conduct, or practice specified in Exchange Act Section 15(b)(4)(C); and (3) the sanction against the person is in the public interest. *See* 15 U.S.C. § 78*o*(b)(4)(C), (6)(A)(iii).[8]

[8] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1376 (2010), added collateral bar sanctions to Section 15(b)(6)(A) of the Exchange Act.

The threshold statutory requirements for the imposition of sanctions (that is, the first two elements) have been satisfied in this case. Allen does not dispute that he was associated with PAA, a registered broker-dealer, as an owner and a registered representative at the time of the alleged misconduct. Answer at 1-2, 14. Nor does Allen dispute that he has been enjoined from future violations of the antifraud provisions of the securities laws by the District Court. Answer at 1 (not denying entry of such injunction). Accordingly, the only remaining determination concerns the third element, the appropriate sanction against Allen under Section 15(b) of the Exchange Act, which, as discussed above, is appropriate for summary disposition.

IV. Sanctions Under Section 15(b) Are Appropriate Against PAA

Sanctions under Section 15(b) of the Exchange Act may be imposed if it "is in the public interest." 15 U.S.C. § 78o(b)(4). The Commission has "repeatedly held that conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws." *Peter Siris*, Exchange Act Rel. No. 71068, 2013 WL 6528874, at *6 (Dec. 12, 2013) (internal quotation marks omitted), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014). *See also Chris G. Gunderson, Esq.*, Exchange Act Rel. No. 61234, 2009 WL 4981617, at *5 (Dec. 23, 2009) ("An antifraud injunction 'ordinarily' warrants barring participation in the securities industry").

The considerations that are relevant in making a public-interest determination include the following factors, among others:

> [T]he egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). "The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive." *Gary M. Kornman*, 2009 WL 367635, at *6.

The public interest requires the imposition of full collateral bars against Allen. All of the *Steadman* factors, as well as other considerations, strongly favor the imposition of such sanction.

First, Allen engaged in egregious and recurrent misconduct. As the District Court found, "the violations [of federal securities laws] continued over a period of years, and were not simply an isolated occurrence of bad judgment." Division Ex. 5 (Opinion & Order) at 2. And consistent with that finding, the Court recognized the egregiousness of Allen's and the other defendants' conduct as one of the factors that "weigh[ed] in favor of imposing significant penalties." *Id.* at 7.

To be sure, the evidence at trial showed that Allen, an owner of PAA, sold AGF II securities from 2011 to 2013, and personally continued to sell another $4 million-plus worth of AGF II securities to more than 40 investors, earning more than $400,000 in commissions for PAA, *after* he learned that the 2012 PPM was false with respect to the audit status and *without* disclosing the falsity in the PPM to investors. *See, e.g.*, Division Ex. 4 (SEC Trial Exhibit/PX 172) at ¶ 81 (stipulating to Allen's purchase of PAA in early 2011), at ¶ 66 ("By July 2012, it came to Wasserman's attention through a conversation with Allen that PAA had not received audited financial statements for AGF II"), at ¶ 35 (stipulating that "[b]etween June 1, 2012 and December 31, 2013, Allen sold a total of $4,064,975 worth of AGF II units to 40 investors, for which PAA received approximately $406,498 in commissions"), at ¶ 36 (stipulating that "[b]etween June 1, 2012 and December 31, 2013, PAA registered representatives other than Allen sold $2,809,300 worth of AGF II units, for which PAA received $280,930 in commissions"); Division Ex. 3 at 502-505 (testimony of Lowry: that PAA, through Allen and Wasserman, had duties as a broker-

dealer to halt further sales of AGF II securities once it learned that the PPM was false or misleading); Division Ex. 4 (SEC Trial Exhibit/PX 187) at 45:25-46:14 (investor John McGowan's testimony: that Allen never discussed with McGowan any audit issue with AGF II from the fall of 2012 to the fall of 2014 when McGowan dealt with Allen).

Second, Allen engaged in misconduct with a high degree of scienter. As the District Court pointed out, "[t]he jury found Defendants [PAA, Allen and Wasserman] liable for violations of the antifraud provisions of the securities laws, which required a finding that Defendants acted with *scienter*." Division Ex. 2 (Opinion & Order) at 2. *See also* Division Ex. 8 (Court's jury instructions) at pp. 19, 24-25, 27-35 (instructing that scienter must be established and found by a jury for violations of the antifraud provisions). And, as discussed above, the evidence at trial showed that Allen persisted in engaging in his misconduct – indeed, Allen intensified his sales efforts to investors – even after the purported time period in which Allen claimed he first learned of the falsity of the offering documents. *See* Division Ex. 4 (SEC Trial Exhibit/PX 172) at ¶ 115 (summary chart showing PAA's sales for various quarters in 2012 and 2013). Thus, Allen did not dispute that "the majority of PAA's sales of AGF II units were made during 2013" (that is, after Allen learned of the falsity); that "Allen solicited the majority of investors in AGF II;" and that "Allen and PAA used the 2012 AGF PPM [that is, the false PPM] to solicit investors through at least the end of calendar year 2013." Division Ex. 4 (SEC Trial Exhibit/PX 172) at ¶¶ 41-43 (stipulations).

Third, Allen has not recognized the wrongful nature of his misconduct. Even after the jury verdict, Allen continues to advance the argument, as he did at both the trial and the remedies stage, that he is not responsible for the wrongdoing and others are blameworthy. *See, e.g.*, Answer at 2-3, 16 (blaming corporate securities counsel for failing to spot alleged inconsistencies in the offering

documents – "they were not focused enough on identifying the legal issues before them"); at 4, 12-14 (blaming co-defendant Ralph Johnson of AGF II and arguing that "Johnson had been continuously misleading" Allen "regarding the status of AGF II's hiring of an auditor"); at 4-9 (blaming prospective investors for failing to discern various risk and conflict of interest issues from the boiler-plate legal disclosures and the "forward-looking" statements in the offering documents); at 11-12, 16 (blaming another outside securities counsel for his alleged ineffective advice regarding amending an offering document for the AGF II offering).

To be sure, these efforts – now, collateral attacks – to avoid or minimize liability were fully litigated in the Civil Action. At trial, Allen's counsel attempted to do so through his opening, closing, witness examinations, and arguments to the Court, including regarding the jury instructions, throughout the two-week trial. *See, e.g.*, Division Ex. 3 (Trial Tr.) at 52-68 (defense counsel's opening statement); at 1127-1153 (his closing); at 297-301, 579-594, 655-679, 688-691 (his examinations of Johnson); at 697-713, 720-727 (his examination of Kahler); at 624-644, 648-649 (his *voir dire* of Russell); at 619-623, 649-653, 730-733, 976 (arguments and court rulings on the admissibility of Russell's testimony); at 981-992, 1002-1008, 1011 (his examination of Russell); at 785-792, 821-863, 873-876, 889-893 (his examinations of Allen); at 355-362, 759-768, 780-81 (his examination of Wasserman); at1198-1199 (jury instructions on advice of counsel defense). In addition, Allen attempted to make similar mitigation arguments during the post-trial remedies stage.[9] *See* Division Ex. 9 (PAA's Post-Trial Brief on Remedies) at 2-13. Accordingly, Allen is precluded from relitigating the liability or remedies issues from the Civil Action here. *See James*

[9] As further proof that the issues presented have already been litigated, it appears that portions of Allen's Answer have been "cut and pasted" verbatim from PAA, Allen and Wasserman's ("PAA Defendants") Post-Trial Brief on Remedies. *Compare* Answer at 2-3 (discussing hiring of securities counsel) *with* Division Ex. 9 (PAA Defendants' Post-Trial Brief on Remedies) at 3-4 (same); Answer at 16 (discussing, among other things, defendants' "mistakes" and lack of investor losses") *with* Division Ex. 9 at 12 (same).

E. Franklin, 2007 WL 2974200, at *4 (respondent cannot relitigate issues that were addressed in a previous civil proceeding against the respondent).

Fourth, Allen has not provided meaningful assurances against future violations. Instead, Allen has provided empty assurances that are belied by his continuing failure to appreciate the gravity of his wrongdoing, as he still claims that "this was a mistake that harmed no one, but of which the SEC (solely because it did not have to prove the elements of reliance or damages at trial) was able to prove a very serious securities law violation." Answer at 17. Moreover, Allen's claim that no investor was harmed is of no moment, as such claim does not mitigate the sanction. *See Gary M. Kornman*, 2009 WL 367635, at *9 ("We are unpersuaded by Kornman's claim that neither the investing public nor the Commission was harmed should mitigate the sanction.... [O]ur focus is on the welfare of investors generally and the threat one poses to investors and the markets in the future"). In short, given that Allen has shown no remorse, his claim that "[t]here is no chance of repetition" (Answer at 15) rings hollow. *See Johnny Clifton*, Exchange Act Rel. No. 69982, 2013 WL 3487076, at *14 (Jul. 12, 2013) ("[F]ailure[] to recognize the wrongfulness of his conduct presents significant risk that, given th[e] opportunity, he would commit further misconduct in the future.") (internal quotation marks omitted; brackets in original).

Fifth, Allen's business will present new opportunities for future violations in the securities industry. "This risk is particularly significant here because opportunities for similar misconduct arise in each of the associational capacities covered by the collateral bar and [Allen's] conduct demonstrates fundamental and ongoing unfitness for any such association." *John W. Lawton*, 2012 WL 6208750, at *12. In fact, there is nothing in the record, in the Civil Action, or in this proceeding, that shows that Allen has ceased (or intends to cease) his securities business as a registered representative, as an owner of a registered broker-dealer, or in some other capacity.

Rather, Allen defiantly asserts that he "has continued to engage in the securities business." Answer at 18. Thus, Allen's continuing involvement in the securities industry poses too great of a risk to the investing public.

Finally, in addition to the consideration of the *Steadman* factors, imposing a collateral bar would serve as a deterrent to others from engaging in similar misconduct. *See Ralph W. LeBlanc*, Exchange Act Rel. No. 48254, 2003 WL 21755845, at *7 (July 30, 2003) (explaining that the sanctions will serve as a deterrent to others). As the Commission explained,

> [t]he proper functioning of the securities industry and markets depends on the integrity of industry participants and their commitment to transparent disclosure. Securities industry participation by persons with a history of fraudulent conduct is antithetical to the protection of investors.

John W. Lawton, 2012 WL 6208750, at *11.

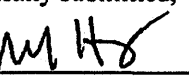
Here, a jury found that Allen committed securities fraud. And the District Court, after full litigation, entered a permanent injunction, enjoining Allen from future violations of the antifraud provisions of the securities laws. Under these circumstances, Allen is unfit to be associated in any manner with the securities industry, and imposing industry (collateral) bars against him would serve as a deterrent to others.

V. Conclusion

For the foregoing reasons, the Division of Enforcement respectfully requests that this Motion for Summary Disposition be granted, and that full industry (collateral) bars under Section 15(b)(6)(A) should be imposed against Allen.

Dated: December 5, 2019
New York, New York

Respectfully submitted,



Alexander M. Vasilescu
Richard Hong
Karen M. Lee
Securities and Exchange Commission
New York Regional Office
200 Vesey Street, Suite 400
New York, New York 10281
Telephone: (212) 336-0956 (Hong)
hongr@sec.gov
Counsel for Division of Enforcement

Certificate of Service

In accordance with Rule 150 of the Commission's Rules of Practice, I hereby certify that true and correct copy of the foregoing motion was served on the following persons on December 5, 2019, and otherwise sent, by the method indicated:

By UPS:
Office of Secretary
Securities and Exchange Commission
100 F Street, N .E.
Washington, DC 20549-2557

By UPS and email (memorandum only):
Richard Roth, Esq. and Jordan Kam, Esq.
The Roth Law Firm, PLLC
295 Madison Avenue, 22nd Floor
New York, NY 10017
Counsel for PAA

Richard Hong, Counsel for Division of Enforcement

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19577

In the Matter of **HOWARD J. ALLEN III,** **Respondent.**	**DECLARATION OF RICHARD HONG IN SUPPORT OF THE DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT HOWARD J. ALLEN III**

I, RICHARD HONG, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a senior trial counsel in the Enforcement Division, New York Regional Office, and an attorney of record in this case. As such, I have personal knowledge regarding the documents discussed herein.

2. I submit this declaration in support of the Division's Motion for Summary Disposition against Howard J. Allen III ("Allen").

3. Attached hereto as **Division Exhibit 1** is a true and correct copy of the docket sheet in *SEC v. American Growth Funding II, LLC, et al.*, No. 16-cv-828-KMW (S.D.N.Y.) ("Civil Action") (as of November 8, 2019).

4. Attached hereto as **Division Exhibit 2** is a true and correct copy of the Complaint filed in the Civil Action.

5. Attached hereto as **Division Exhibit 3** consists of a true and correct copy of the trial transcripts in the Civil Action (nine volumes).

6. Attached hereto as **Division Exhibit 4** is a true and correct copy of the SEC's admitted trial exhibits in the Civil Action (74 exhibits).

7. Attached hereto as **Division Exhibit 5** is a true and correct copy of the Opinion & Order issued by the United States District Court (Hon. Kimba M. Wood) in the Civil Action.

8. Attached hereto as **Division Exhibit 6** consists of a true and correct copy of the Final Judgments (as to Allen and Portfolio Advisors Alliance, Inc.; and as to Kerri L. Wasserman) entered in the Civil Action.

9. Attached hereto as **Division Exhibit 7** consists of a true and correct copy of the email exchange between counsel for the Division of Enforcement and Respondent Allen regarding discovery in this administrative proceeding.

10. Attached hereto as **Division Exhibit 8** is a true and correct copy of the Court's jury instructions given at the trial against Allen in the Civil Action.

11. Attached hereto as **Division Exhibit 9** is a true and correct copy of Allen's Post-Trial Brief on Remedies filed in the Civil Action.

Dated: December 5, 2019
New York, New York

Richard Hong