

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**INVESTMENT ADVISERS ACT of 1940**  
**Release No. 6064 / July 7, 2022**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20928**

**In the Matter of**

**Richard Gearhart,**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
PROCEEDINGS PURSUANT TO SECTION  
203(f) OF THE INVESTMENT ADVISERS  
ACT OF 1940 AND NOTICE OF HEARING**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Richard Gearhart (“Gearhart”).

**II.**

After an investigation, the Division of Enforcement alleges that:

**A. RESPONDENT**

Richard Gearhart, age 72, is currently incarcerated at the FCI Phoenix Satellite Camp in Phoenix, Arizona. At all times relevant to this proceeding, Gearhart owned and operated Asset Preservation Specialists (“APS”) together with another individual. At all times relevant to this proceeding, Gearhart was a licensed insurance agent in the State of Indiana. From 2010 through 2019, Gearhart was an indirect owner with a controlling interest in Vantage Advisors, LLC (“Vantage”), a registered investment adviser located in Indianapolis, IN.

B. RESPONDENT'S CRIMINAL CONVICTION

1. On December 16, 2019, Gearhart executed a plea agreement pursuant to which he agreed to plead guilty to one count of conspiracy to commit securities fraud in violation of 18 U.S.C. § 371. US v. Gearhart, et al., 16CR178 (N.D. Ind. 2016). On January 2, 2020, the court found Gearhart guilty of conspiracy to commit securities fraud in violation of 18 U.S.C. § 371 based upon his guilty plea. Gearhart was sentenced to 5 years' imprisonment and was ordered to pay restitution in the amount of \$5,384,273.97.

2. The count of the criminal indictment to which Gearhart pleaded guilty alleged, among other things, that he knowingly and willfully conspired, in connection with the offer, purchase, and sale of securities, to use and employ manipulative devices and contrivances contrary to 17 CFR 240.10b-5 that acted as a fraud and deceit upon investors in violation of 15 USC §§ 78j(b) and 78ff(a).

3. In the plea agreement upon which his conviction was based, Gearhart admitted that he and another individual "knowingly and intentionally engaged in a securities fraud scheme in which we obtained over \$1.5 million dollars [sic] of investor funds from more than 25 victims through false statements, misrepresentations, and omissions of material facts, which resulted in misleading the investors into purchasing these securities through me and [the other individual]." Gearhart further admitted that he "directed individuals to invest their existing retirement funds – including funds from 401ks, IRAs, and annuities – with me and my company," APS, and that the scheme "involved selling and promoting the sale of securities . . . to investors." Gearhart and the other individual promised investors that their original investments would be returned to them upon request within a specified time period with interest and no loss of principal. In reality, without telling investors they were doing so, Gearhart and the other individual used investor proceeds to fund businesses in which one or both of them were officers, owners, or members, to make Ponzi-like payments to other investors, and to pay for personal expenses.

4. During the time of the alleged violations to which he pleaded guilty, Gearhart was associated with an investment adviser by virtue of his status as an indirect owner with a controlling interest in Vantage.

**III.**

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II above are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

#### IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed by further order of the Commission, pursuant to Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220(b).

IT IS FURTHER ORDERED that the Division of Enforcement and Respondent shall conduct a prehearing conference pursuant to Rule 221 of the Commission's Rules of Practice, 17 C.F.R. § 201.221, within fourteen (14) days of service of the Answer. The parties may meet in person or participate by telephone or other remote means; following the conference, they shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference. If a prehearing conference was not held, a statement shall be filed with the Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer.

If Respondent fails to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to service of paper copies, service to the Division of Enforcement of all opinions, orders, and decisions described in Rule 141, 17 C.F.R. § 201.141, and all papers described in Rule 150(a), 17 C.F.R. § 201.150(a), in these proceedings shall be by email to the attorneys who enter an appearance on behalf of the Division, and not by paper service.

Attention is called to Rule 151(a), (b) and (c) of the Commission's Rules of Practice, 17 C.F.R. § 201.151(a), (b) and (c), providing that when, as here, a proceeding is set before the Commission, all papers (including those listed in the following paragraph) shall be filed electronically in administrative proceedings using the Commission's Electronic Filings in Administrative Proceedings (eFAP) system access through the Commission's website, [www.sec.gov](http://www.sec.gov), at <http://www.sec.gov/eFAP>. Respondent also must serve and accept service of

documents electronically. All motions, objections, or applications will be decided by the Commission.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to filing with or disposition by a hearing officer, all filings, including those under Rules 210, 221, 222, 230, 231, 232, 233, and 250 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, and 250, shall be directed to and, as appropriate, decided by the Commission. This proceeding shall be deemed to be one under the 75-day timeframe specified in Rule of Practice 360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i), for the purposes of applying Rules of Practice 233 and 250, 17 C.F.R. §§ 201.233 and 250.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that the Commission shall issue a decision on the basis of the record in this proceeding, which shall consist of the items listed at Rule 350(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.350(a), and any other document or item filed with the Office of the Secretary and accepted into the record by the Commission. The provisions of Rule 351 of the Commission's Rules of Practice, 17 C.F.R. § 201.351, relating to preparation and certification of a record index by the Office of the Secretary or the hearing officer are not applicable to this proceeding.

The Commission will issue a final order resolving the proceeding after one of the following: (A) The completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) The completion of briefing on a motion for a ruling on the pleadings or a motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, where the Commission has determined that no public hearing is necessary; or (C) The determination that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155, and no public hearing is necessary.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Vanessa A. Countryman  
Secretary