INITIAL DECISION RELEASE NO. 697
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15937

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of	:	INITIAL DECISION OF DEFAULT
	:	October 22, 2014
ALICIA BRYAN	:	

APPEARANCES: Karen Matteson for the Division of Enforcement, Securities and Exchange Commission

BEFORE: Cameron Elliot, Administrative Law Judge

Summary

This Initial Decision of Default grants the Division of Enforcement's (Division) Motion for Imposition of Remedial Sanctions (Motion) and permanently bars Respondent Alicia Bryan (Bryan) from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock (collectively, associational bar).

Procedural Background

On June 18, 2014, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) against Bryan, pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleges that a final judgment by default was entered against Bryan on June 10, 2014, permanently enjoining her from future violations of Sections 5(a), 5(c), and 17(a)(2) of the Securities Act of 1933 (Securities Act), and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5(b) thereunder, in *SEC v. Pedras*, No. 2:13-cv-07932 (C.D. Cal.) (*Pedras*). OIP at 1-2.

Bryan was personally served with the OIP on July 11, 2014, in accordance with Commission Rule of Practice (Rule) 141(a)(2)(i). *Alicia Bryan*, Admin Proc. Rulings Release No. 1621, 2014 SEC LEXIS 2563 (July 17, 2014). Bryan did not file an answer to the OIP, and on August 4, 2014, I ordered her to show cause by August 11, 2014, why this proceeding should not be determined against her. *Alicia Bryan*, Admin. Proc. Rulings Release No. 1668, 2014 SEC LEXIS 2787. Bryan did not respond to that order. On August 15, 2014, I found Bryan in default, and ordered the Division to file a motion for sanctions, by September 12, 2014, providing legal authority and evidentiary support relating to the allegations in the OIP and sanctions sought by the Division. *Alicia Bryan*, Admin. Proc. Rulings Release No. 1703, 2014 SEC LEXIS 2947.

On August 27, 2014, this Office received a letter from Bryan explaining that she did not intend to defend herself in this proceeding because she "lack[s] the wherewithal to retain defense counsel to prove [she is] innocent of these unsubstantiated allegations." In view of her pro se status, on August 28, 2014, I construed Bryan's letter very liberally as a motion to set aside default and ordered a prehearing conference for September 5, 2014. *Alicia Bryan*, Admin. Proc. Rulings Release No. 1730, 2014 SEC LEXIS 3076. Bryan did not attend the prehearing conference and on September 8, 2014, I once again found Bryan to be in default and ordered that the Division file a motion for sanctions by September 19, 2014. *Alicia Bryan*, Admin. Proc. Rulings Release No. 1774, 2014 SEC LEXIS 3244. On September 9, 2014, this Office received an email from Bryan stating that she did not attend the prehearing conference "not only because Bryan has no legal representation, but also because Bryan was picking up her daughter from school at the scheduled time." I once again construed Bryan's letter very liberally as a renewed motion to set aside default, and found that she had not established good cause to do so. *Alicia Bryan*, Admin. Proc. Rulings Release No. 1782, 2014 SEC LEXIS 3266. On September 10, 2014, this Office received an email from Bryan stating, among other things, that "these contrived legal proceedings" are a "travesty of justice," that she is an "innocent, unemployed single mother," and that "God will one day . . . punish the wicked."

On September 11, 2014, I ordered that Bryan could file a motion to set aside the default pursuant to Rule 155(b), 17 C.F.R. § 201.155(b), so long as the motion is (1) made within a reasonable time, (2) states the reasons for the failure to appear or defend, and (3) specifies the nature of the proposed defense in the proceeding. *See Alicia Bryan*, Admin. Proc. Rulings Release No. 1797, 2014 SEC LEXIS 3303. I further ordered that all filings be made pursuant to, an in accordance with, Rules 151 and 152, 17 C.F.R. §§ 201.151, .152. *Id*. Bryan has not made any such filings.

On September 16, 2014, the Division filed its Motion. Attached to the Motion are two exhibits (Exs. 1-2).[1] Bryan did not respond to the Motion.

On September 16, 2014, I issued an order taking official notice of all documents filed in *Pedras*, in particular the Division's application for a temporary restraining order and attached exhibits, and the temporary restraining order itself, pursuant to Rule 323, 17 C.F.R. § 201.323. *Alicia Bryan*, Admin. Proc. Rulings Release No. 1809, 2014 SEC LEXIS 3397.

The Motion is granted. This proceeding will be determined upon consideration of the record, including the OIP, the facts of which are deemed true, and the Division's exhibits, as well as on underlying documents from *Pedras*, officially noticed pursuant to Rule 323. *See* 17 C.F.R. § 201.155(a); *see Don Warner Reinhard*, Exchange Act Release No. 61506, 2010 SEC LEXIS 1010, at *12-14 (Feb. 4, 2010); *Robert Bruce Lohmann*, Exchange Act Release No. 48092, 2003 SEC LEXIS 3171, at *17 (June 26, 2003) (finding that matters "not charged in the OIP" may nevertheless be considered "in assessing sanctions").

[1] Exhibit 1 is the memorandum and order regarding motion for default judgment in *Pedras*. *Pedras* (April 16, 2014), ECF No. 74 (Ex. 1). Exhibit 2 is the Final Judgment. *Pedras* (June 9, 2014), ECF No. 78 (Ex. 2)

Findings of Fact

Bryan, age 43, resides in Bossier City, Louisiana. OIP at 1; Mem. of P. & A. in Supp. of Ex Parte Appl. for TRO at 3, *Pedras* (October 28, 2013), ECF No. 9 (Memo). Bryan was the managing director of A&B Consulting, LLC, which she formed in Nevada in August 2011. OIP at 1; Decl. of J. Cindy Eson in Supp. of Commission's Ex Parte App. for a TRO (Eson Decl.) Ex. 21 at 151, *Pedras* (October 28, 2013), ECF No. 8. Bryan is not registered with the Commission in any capacity, and at all times acted as an unregistered broker. OIP at 1; Eson Decl. Ex. 13.

From at least July 2010 until at least the summer of 2013, Bryan offered and sold securities in unregistered offerings based on materially false representations and omissions. Ex. 1 at 3. Bryan served as a lead sales representative and falsely represented the nature of investments in two programs she offered. Ex. 1 at 3-4; *see* Eson Decl. Exs. 28; 26 at 206-07. First, she pitched the Maxum Gold Trade Program (Maxum) to investors as a "low risk" investment with returns ranging between 4-8% per month. Ex. 1 at 3; Eson Decl. Ex. 28 at 241; *see* Eson Decl. Exs. 34 at 309; 35 at 340. Bryan also misrepresented to investors that investor funds would be placed in an escrow account. Eson Decl. Exs. 26 at 197; 28 at 217; 38 at 384. Second, after encountering difficulties making the promised payouts for Maxum, Bryan began offering the FMP Renal Program (FMP) to investors who had already bought into Maxum, purporting to offer investors the opportunity to back New Zealand kidney dialysis clinics. Ex. 1 at 4; Eson Decl. Exs. 26 at 210-11; 30 at 257-58. In addition to directly soliciting investors for both the Maxum and FMP programs, Bryan recruited sales agents to promote the programs, and paid those sales agents' commissions. Ex. 1 at 11; Decl. of Dora M. Zaldivar in Supp. of Commission's Ex Parte App. for a TRO (Zaldivar Decl.) at 6-7, *Pedras* (October 28, 2013), ECF No. 7; Eson Decl. Ex. 26 at 195-96. Maxum and FMP were neither real nor registered with the Commission, and were in fact Ponzi schemes. OIP at 2; Ex. 1 at 4; *see* Zaldivar Decl. at 5-10 (tracking deposits and disbursements for accounts associated with Maxum and FMP). Pursuant to the Ponzi schemes, more than $5.6 million was raised from over fifty United States investors, and Bryan received $226,676 in commissions. Ex. 1 at 4; Zaldivar Decl. 5-6.

On June 9, 2014, a final judgment by default was entered against Bryan in *Pedras*, permanently enjoining her from future violations of Sections 5(a), 5(c), and 17(a)(2) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5(b) thereunder, and imposing disgorgement of $228,917.22 in ill-gotten gains and prejudgment interest and a civil penalty of $150,000. *Pedras*, ECF No. 78 (Final Judgment); OIP at 1.[2]

Conclusions of Law

Exchange Act Section 15(b)(6) authorizes the Commission to impose an associational bar as a sanction against Bryan if: (1) at the time of the alleged misconduct, she was associated or seeking to become associated with a broker or dealer; (2) she has been enjoined from any action, conduct, or practice specified in Exchange Act Section 15(b)(4)(C); and (3) the sanction is in the public interest. 15 U.S.C. §78*o*(b)(6)(A)(iii).

[2] The OIP erroneously states that the final judgment by default was entered against Bryan on June 10, 2014.

The district court enjoined Bryan from future violations of the federal securities laws, *i.e.*, "conduct . . . in connection with the purchase or sale of any security," within the meaning of Exchange Act Section 15(b)(4)(C). 15 U.S.C. § 78*o*(b)(4)(C); Final Judgment; OIP at 1. During the time of her misconduct, Bryan was not associated with a registered broker or dealer. However, Exchange Act Section 15(b) also applies to persons acting as a broker or dealer or associated with an unregistered broker or dealer. *See Vladislav Steven Zubkis*, Exchange Act Release No. 52876, 2005 SEC LEXIS 3125, at *20 (Dec. 2, 2005) (noting that Exchange Act Section 15(b) applies to persons acting as a broker or dealer). Bryan engaged in the business of effecting transactions in securities for the account of others, and thus acted as an unregistered broker during the time of her misconduct.[3] *See* OIP at 1; Eson Decl. Ex. 13; Ex. 26 at 207. Accordingly, a sanction will be imposed on Bryan if it is in the public interest.

Sanction

The Division seeks an associational bar against Bryan. Mot. at 2-6. The appropriateness of any remedial sanction in this proceeding is guided by the public interest factors set forth in *Steadman v. SEC*, namely: the egregiousness of the respondent's 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 conduct; and the likelihood that the respondent's occupation will present opportunities for future violations. 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010). 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 SEC LEXIS 367, at *22. The Commission also considers the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and the deterrent effect of administrative sanctions. *See Schield Mgmt. Co.*, 58 S.E.C. 1197, 1217-18 & n.46 (2006); *Marshall E. Melton*, 56 S.E.C. 695, 698 (2003). Associational bars have long been considered effective deterrence. *See Guy P. Riordan*, Exchange Act Release No. 61153, 2009 SEC LEXIS 4166, at *81 & n.107 (Dec. 11, 2009) (collecting cases), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010).

After analyzing the public interest factors in light of the protective interests served, Bryan's current competence, and her risk of future misconduct, I have determined that it is appropriate and in the public interest to bar Bryan from participation in the securities industry to the fullest extent possible. *See Ross Mandell*, Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014). Bryan's conduct was egregious. Bryan participated in a scheme to defraud

[3] Exchange Act Section 3(a)(10) defines the term "security" to include an "investment contract." 15 U.S.C. § 78c(a)(10). In *SEC v. W.J. Howey Co.*, the Supreme Court defined an "investment contract" as "a contract, transaction, or scheme whereby a person invests his or her money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party." 328 U.S. 293, 298-99 (1946). Bryan's offerings to investors under both the Maxum and FMP programs meet the definition of an investment contract, and thus a security. The fact that Maxum and FMP were Ponzi schemes and no real instruments were offered does not preclude the finding that Bryan effected transactions in securities. *See Consolidated Investment Services, Inc.*, Initial Decision Release No. 59, 1994 SEC LEXIS 4045, at *19 n.7 (Dec. 12, 1994) ("Non-existence of an instrument does not logically preclude it from being defined as a security.") (citing circuit court cases).

investors in which she obtained approximately $226,676 in commissions after $5.6 million was raised from over fifty United States investors. OIP at 2; Zaldivar Decl. at 6. Violations involving the antifraud provisions of the federal securities laws are especially serious and merit the severest of sanctions. *Marshall E. Melton*, 56 S.E.C. 695, 713 (2003); *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, *23 (Dec. 12, 2013).

Bryan's conduct was also recurrent in that she solicited investors to invest in the Maxum and FMP schemes over the course of approximately three years. OIP at 2; *see* Eson Decl. Ex. 26 at 194-95, 206; Eson. Decl. Exs. 49, 28. The district court enjoined Bryan from violations of Exchange Act Section 10(b) and Rule 10b-5, antifraud provisions which require scienter, "a mental state embracing intent to deceive, manipulate, or defraud." *See Aaron v. SEC*, 446 U.S. 680, 686 n.5, 691 (1980). Bryan's offering of investment contracts based on non-existent investment strategies or projects involved a high degree of scienter. Ex. 1 at 10; *see* Eson Decl. Ex. 28 at 240, 247-49. When subpoenaed for investigative testimony by the Commission in November 2012, Bryan refused to appear. Eson Decl. at 5. After subsequently being ordered to appear, Bryan invoked her Fifth Amendment right against self-incrimination for all questions pertaining to Maxum Gold or FMP. Eson Decl. Ex. 23. I, however, draw no adverse inference from her invocation of her Fifth Amendment right.

Bryan has not offered any assurances against future violations, having defaulted in both this proceeding and *Pedras*. Moreover, the emails Bryan has sent this Office demonstrate complete lack of remorse and a refusal to acknowledge any wrongdoing. Although "[c]ourts have held that the existence of a past violation, without more, is not a sufficient basis for imposing a bar[,] . . . 'the existence of a violation raises an inference that it will be repeated.'" *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *23 n.50 (July 26, 2013) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)) (alteration in internal quotation omitted). Bryan has offered no evidence to rebut that inference.

I accept as true Bryan's representation that she is currently unemployed. However, absent an associational bar, Bryan would be permitted to resume activities within the securities industry, which would present opportunities for future violations and the risk that her conduct will be repeated. "Each area of the industry covered by the [associational] bar presents continual opportunities for similar dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence." *Ross Mandell*, 2014 SEC LEXIS 849, at *22 (internal quotation marks and alteration brackets omitted); *see Richard C. Spangler, Inc.*, 46 S.E.C. 238, 252 (1976) ("When the past misconduct involves fraud, fidelity to the public interest requires us to be mindful of the fact that the securities business is one in which opportunities for dishonesty recur constantly and that this necessitates specialized legal treatment." (internal footnote omitted)). If Bryan does intend to reenter the industry, her egregious conduct shows that the likelihood of future violations is significant.

In conclusion, it is in the public interest to impose a permanent associational bar against Bryan.[4]

[4] Under Exchange Act Section 15(b)(6), the Commission is authorized to impose the full range of permanent bars, including the penny-stock bar, against Bryan if, in relevant part, at the time of the alleged misconduct, she was associated with a broker or dealer. 15 U.S.C. § 78*o*(b)(6)(A); *see, e.g.*, *Herbert Steven Fouke*, Initial Decision Release No. 660, 2014 SEC LEXIS 3095, at *21 n.10 (Aug.

Order

It is ORDERED that the Division of Enforcement's Motion for Sanctions against Alicia Bryan is GRANTED.

It is FURTHER ORDERED that, pursuant to Section 15(b) of the Securities Exchange Act of 1934, Alicia Bryan is permanently BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in an offering of penny stock, including acting as any promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360. *See* 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111. *See* 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact.

The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occurs, the Initial Decision shall not become final as to that party.

Bryan may move to set aside the default in this case. Rule 155(b) permits the Commission, at any time, to set aside a default for good cause, in order to prevent injustice and on such conditions as may be appropriate. 17 C.F.R. § 201.155(b). A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. *Id.*

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Cameron Elliot
Administrative Law Judge

29, 2014); *George Louis Theodule*, Initial Decision Release No. 607, 2014 SEC LEXIS 1866, at *15 n.6 (June 2, 2014).