Initial Decision Release No. 1339
Administrative Proceeding
File No. 3-18545

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

In the Matter of

Bryan Lee Addington

Initial Decision
December 20, 2018

Appearance: Andrew Schiff for the Division of Enforcement, Securities and Exchange Commission

Before: James E. Grimes, Administrative Law Judge

Summary

I grant the Division of Enforcement's motion for entry of default. Respondent Bryan Lee Addington is barred from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization or from participating in an offering of penny stock.

Procedural Background

The Securities and Exchange Commission initiated this proceeding in June 2018, when it issued an order instituting proceedings (OIP) under Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.[1] This proceeding is a follow-on proceeding based on Addington's conviction in the United States District Court for the Middle District of Louisiana.[2]

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1 OIP ¶ I; *see* 15 U.S.C. §§ 78*o*(b), 80b–3(f).

2 *See United States v. Bryan Lee Addington*, No. 3:16-cr-98 (M.D. La.).

Addington was served with the OIP in June 2018.[3] Also in June, the Commission stayed all pending cases.[4] In August 2018, the Commission allowed the stay to lapse and ordered that all pending cases be reassigned.[5] Following the Commission's August order, this proceeding was reassigned to me.[6] Following reassignment, I extended Addington's deadline to answer the OIP to October 30, 2018, and scheduled a prehearing conference for the same day.[7] After Addington failed to file an answer to the OIP or participate in the conference, I ordered him to show cause why he should not be found in default.[8] I also directed the Division to file a dispositive motion by December 4, 2018.

The Division later filed a timely motion for default supported by four exhibits (cited herein as "Ex. _").

Findings of Fact

The findings and conclusions in this initial decision are based on the record and on facts officially noticed under Rule 323, 17 C.F.R. § 201.323. Because he failed to answer the OIP or otherwise participate in this proceeding, Addington is in default.[9] As a result of Addington's default, I have accepted as true the factual allegations in the OIP.[10] In making the

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[3] *Bryan Lee Addington,* Admin. Proc. Rulings Release No. 6158, 2018 SEC LEXIS 2780, at *1 (ALJ Oct. 10, 2018). At the time Addington was served, this proceeding was assigned to a different administrative law judge. *See Bryan Lee Addington*, Admin. Proc. Rulings Release No. 5805, 2018 SEC LEXIS 1430 (ALJ June 18, 2018).

[4] *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10510, 2018 WL 3193858 (June 21, 2018).

[5] *Pending Admin. Proc.*, Securities Act Release No. 10536, 2018 WL 4003609, at *1 (Aug. 22, 2018).

[6] *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5955, 2018 SEC LEXIS 2264, at *2–3 (ALJ Sept. 12, 2018).

[7] *Addington*, 2018 SEC LEXIS 2780, at *1.

[8] *Bryan Lee Addington*, Admin. Proc. Rulings Release No. 6271, 2018 SEC LEXIS 3024, at *1 (ALJ Oct. 31, 2018).

[9] *See* 17 C.F.R. §§ 201.155(a), .220(f); *Pending Admin. Proc.*, 2018 WL 4003609, at *1.

[10] *See* 17 C.F.R. §§ 201.155(a), .220(f).

findings below, I have applied preponderance of the evidence as the standard of proof.[11]

From 1995 through February 2010, Addington was associated with several Commission-registered broker-dealers, including First Midwest Securities, Inc.[12] After Addington's association with First Midwest ended in February 2010, he acted as an unregistered investment adviser who operated various entities, through which he received compensation for engaging in the business of advising others whether to invest in, purchase, or sell securities.[13] Addington operated these entities from 2010 through 2016 as part of a scheme to defraud.[14]

As part of his scheme, Addington told his investment clients that their money would be invested in annuities, film tax credits, insurance products and policies, real estate, and stocks.[15] He also told them that their investments were safe and would yield good, and sometimes guaranteed, returns.[16] Addington created an impression of legitimacy by having his investors complete account applications, giving them promissory notes, sending them account statements, and making "distribution" payments to them.[17]

In fact, Addington did not invest his investors' money as promised. Instead, he used their funds for his own benefit and to make Ponzi-style payments to other investors.[18] The account statements he sent were thus false and, contrary to what he represented, he knew his investors' money was

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11 *See John Francis D'Acquisto*, Advisers Act Release No. 1696, 1998 WL 34300389, at *2 (Jan. 21, 1998) ("preponderance of the evidence … is the standard of proof in [Commission] administrative proceedings").

12 OIP ¶ II.A.1.

13 *Id.*

14 Ex. 3 (plea agreement) at 5–6.

15 *Id.* at 6.

16 *Id.*

17 *Id.* at 6–7.

18 *Id.* at 6–7.

not safe and would not yield good or guaranteed returns. Through his scheme, Addington caused his victims over $5.3 million in losses.[19]

In September 2016, Addington was indicted on five counts of mail fraud, in violation of 18 U.S.C. § 1341, and one count of aggravated identity theft, in violation of 18 U.S.C. § 1028A.[20] In March 2017, Addington pleaded guilty to one count of mail fraud and one count of aggravated identity theft.[21] The mail fraud charge to which he pleaded guilty concerned his sending a false account statement through the mail and the identity theft charge concerned an incident when he forged a signature on a "collateral assignment of real estate," which he presented to an investor in an attempt to make him think he had a collateral interest in the investment.[22] The district court sentenced Addington in November 2017 to 159 months' imprisonment and ordered restitution in excess of $5.3 million to 39 victims.[23]

Conclusions of Law

The Exchange Act gives the Commission authority to impose collateral and penny stock bars[24] against Addington if, as is relevant here, (1) he was

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[19] *See* Ex. 4 (judgment) at 6; OIP ¶ II.B.3.

[20] Ex. 1 (indictment) at 1–4.

[21] Ex. 3 at 1.

[22] *Id*. at 7–8.

[23] Ex. 4 at 2, 6.

[24] A collateral bar, also referred to as an industry bar, is a bar that prevents an individual from participating in the securities industry in capacities in addition to those in which the person was participating at the time of his or her misconduct. *See Toby G. Scammell*, Advisers Act Release No. 3961, 2014 WL 5493265, at *1 & n.1 (Oct. 29, 2014). Because Addington's misconduct while associated with an investment adviser continued after the July 22, 2010, effective date of the Dodd-Frank Act, imposing a collateral bar under Advisers Act Section 203(f) does not run afoul of *Bartko v. SEC*, 845 F.3d 1217, 1222-24 (D.C. Cir. 2017). *See* Pub. L. 111-203, 124 Stat. 1376. The sole industry nexus alleged for a sanction under Section 15(b), however, is Addington's past association with a broker "at the time of the alleged misconduct," 15 U.S.C. § 78*o*(b)(6)(A), and that association ended in February 2010—before Dodd-Frank's effective date. In this circumstance, imposing Dodd-Frank's collateral bar under Section 15(b) would attach new legal consequences to events completed before Dodd-Frank's enactment and thus would be impermissibly retroactive. *See Bartko*, 845 F.3d at 1223-24. I

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associated with or seeking to become associated with a broker or dealer at the time of the misconduct at issue; (2) he was convicted within ten years before the issuance of the OIP of an offense "involv[ing]" a violation 18 U.S.C. § 1341; and (3) imposing a bar is in the public interest.[25] The Advisers Act gives the Commission similar authority with respect to a person associated with or seeking to be associated with an investment adviser, but only to impose a collateral bar, not a penny stock bar.[26]

The first factor is met in this case. According to Addington's plea agreement, his misconduct began no later than January 1, 2010, and lasted until April 2016.[27] Addington was associated with First Midwest, a Commission-registered broker-dealer from 2007 through February 2010, which is within a portion of the period of his misconduct.[28] He was associated with an investment adviser, himself, after February 2010, through April 2016, also within the relevant period.[29]

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therefore rely on Section 15(b) only when imposing a bar from being associated with a broker or dealer, or from participating in an offering of a penny stock. *See* Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Pub. L. 101-429, § 504(a), 104 Stat. 931 (authorizing a penny-stock bar, under Section 15(b), in addition to the existing authority to bar association with a broker or dealer).

[25] 15 U.S.C. § 78*o*(b)(4)(B)(iv), (6)(A)(ii).

[26] 15 U.S.C. § 80b-3(e)(2)(D), (f).

[27] Ex. 3 at 6.

[28] OIP ¶ II.A.1.

[29] *Id*. An investment adviser is "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities." 15 U.S.C. § 80b-2(a)(11). The facts alleged in the OIP, which I deem true, state that Addington did the things enumerated by the statute, and he stipulated that he was an investment adviser in his plea agreement. OIP ¶ II.A.1; Ex. 3 at 5–6. I therefore find he acted as an investment adviser. The fact that Addington never registered himself, or the entities he operated, as an investment adviser is irrelevant to the determination that he was, in fact, an investment adviser and associated with an investment adviser. *See Teicher v. SEC*, 177 F.3d 1016, 1017-18 (D.C. Cir. 1999) (holding that the statutory definition of the term investment adviser does not depend on registration with the Commission but rather depends on whether "any person … , for compensation, engages in the

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The second factor is also met. Addington was convicted in March 2017, less than ten years before the Commission issued the OIP.[30] And one of the counts to which Addington pleaded guilty involved a violation of 18 U.S.C. § 1341, thus meeting the requirements of both Exchange Act Section 15(b) and Advisers Act Section 203(f).[31]

To determine whether imposing a collateral bar would be in the public interest, I must weigh the public-interest factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).[32] The public interest factors include:

> 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.[33]

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business of advising others ... as to the advisability of investing in, purchasing, or selling securities"); *Anthony J. Benincasa*, Investment Company Act of 1940 Release No. 24854, 2001 WL 99813, at *1 (Feb. 7, 2001) (same).

[30] For purposes of the Advisers Act, the term *convicted* is defined to include a plea of guilty. *See* 15 U.S.C. § 80b-2(a)(6). The Commission applies this definition for purposes of the Exchange Act. *See* Delegation of Authority to the Secretary of the Comm'n, 67 Fed. Reg. 30,326, 30,326 n.5 (May 6, 2002); *see also Alexander Smith*, Exchange Act Release No. 3785, 1946 WL 24891, at *6 (Feb. 5, 1946) (holding that a plea of guilty constitutes a conviction for purposes of Exchange Act Section 15(b)).

[31] *See* 15 U.S.C. §§ 78*o*(b)(4)(B)(iv), (6)(A)(ii), 80b-3(e)(2)(D), (f).

[32] *See Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *6 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010).

[33] *David R. Wulf*, Exchange Act Release No. 77411, 2016 WL 1085661, at *4 (Mar. 21, 2016).

The Commission also considers the deterrent effect of administrative sanctions.[34] The public interest inquiry is "flexible" and "no one factor is dispositive."[35]

Before imposing a collateral bar, an administrative law judge must determine, based on the evidence presented, "whether such a remedy is necessary or appropriate to protect investors and markets."[36] I must therefore "'review [Addington's] case on its own facts' to make findings regarding [his] fitness to participate in the industry in the barred capacities."[37] A decision to impose a collateral bar "should be grounded in specific 'findings regarding the protective interests to be served' by barring the respondent and the 'risk of future misconduct.'"[38]

In weighing the public interest, it bears noting that "[t]he securities industry presents continual opportunities for dishonesty and abuse, and depends heavily on the integrity of its participants and on investors' confidence."[39] And investment advisers serve as fiduciaries who owe their clients "an affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts,' as well as an affirmative obligation to employ reasonable care to avoid misleading clients."[40] Given the industry's

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[34] *Id.* General deterrence is a relevant but non-determinative consideration in assessing whether the public interest weighs in favor of imposing a collateral bar. *See Peter Siris*, Advisers Act Release No. 3736, 2013 WL 6528874, at *11 n.72 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014).

[35] *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *4 (Sept. 26, 2007), *pet. denied*, 548 F.3d 129 (D.C. Cir. 2008).

[36] *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014) (internal quotation marks omitted), *vacated in part on other grounds*, Exchange Act Release No. 77935, 2016 WL 3030883 (May 26, 2016).

[37] *Id.* (quoting *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005)).

[38] *Id.* (quoting *McCarthy*, 406 F.3d at 189–90); *see also John W. Lawton*, Advisers Act Release No. 3513, 2012 WL 6208750, at *9 (Dec. 13, 2012) ("[T]he Commission must consider not only past misconduct, but the broader question of the future risk the respondent poses to investors."), *vacated in part on other grounds*, Advisers Act Release No. 4402, 2016 WL 3030847 (May 27, 2016).

[39] *Seghers*, 2007 WL 2790633, at *7.

[40] *Id.* (ultimately quoting *Capital Gains Research Bureau v. SEC*, 375 U.S. 180, 194 (1963)).

dependence on the integrity of its participants, the duty investment advisers owe their clients, and the confidence and trust investors necessarily place in investment advisers, the Commission takes a particularly dim view of investment advisers who defraud their clients.[41]

Turning to the *Steadman* public-interest factors, Addington's conduct was egregious. For starters, when he wasn't using his investment clients' money for his own benefit, he used their money to run a Ponzi scheme. Either way, he lied to his investors about what he intended to do with their investments. And he doubled down on his lies by sending false account statements in an effort to falsely show that all was well. The district court's judgment sentencing Addington to over 13 years' imprisonment and ordering restitution to almost 40 victims of nearly $5.4 million is further testament to the egregiousness of Addington's conduct. These facts show that Addington is neither fit to be trusted with investors' funds nor to remain in the securities industry. Excluding him from it would best serve the Commission's interest in protecting the investing public.

As to the remaining public-interest factors, given that he stole from 39 victims as part of a six-year scheme, Addington's conduct was not isolated but was instead recurrent.

Addington also acted with a high degree of scienter. He did not accidentally run a Ponzi scheme or accidentally enrich himself with his clients' funds. It is plain that he acted intentionally to cover his fraud when he mailed false account statements designed to convince his clients that he was properly managing their investment. And the fact that Addington's scheme lasted for years and involved multiple victims further shows that he acted with scienter. Furthermore, the mail fraud offense to which he pleaded guilty necessarily involved intent to defraud.[42]

Addington has not participated in this proceeding. He has thus not made assurances against future misconduct or demonstrated that he understands or recognizes the wrongfulness of his criminal acts.

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[41] *See James C. Dawson*, Advisers Act Release No. 3057, 2010 WL 2886183, at *4 (July 23, 2010) ("we have consistently viewed misconduct involving a breach of fiduciary duty or dishonest conduct on the part of a fiduciary, such as the fraud committed by Dawson on his clients, as egregious").

[42] *See* 18 U.S.C. § 1341; *United States v. Traxler*, 764 F.3d 486, 488 (5th Cir. 2014); Ex. 3 at 1, 7–8.

Moreover, allowing Addington to remain in the securities industry would present him with future opportunities for further misconduct and would put the investing public at risk. In this regard, the fact of Addington's criminal misconduct "raises an inference that" he will repeat it.[43] That inference is supported by my determination that Addington's conduct was egregious.[44]

Finally, imposing a collateral bar will serve the Commission's interest in deterring others from engaging in similar misconduct.

In light of the factors discussed above, I find that it is in the public interest to impose a collateral and penny-stock bar against Addington.

Order

The Division of Enforcement's motion for default and sanctions is GRANTED.

Under Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Bryan Lee Addington is BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.[45]

Under Section 15(b) of the Securities Exchange Act of 1934, Bryan Lee Addington, is BARRED from participating in an offering of penny stock, including acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance of trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

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[43] *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *6 n.50 (July 26, 2013) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)).

[44] *See Geiger*, 363 F.3d at 489 (holding that a finding of egregiousness "justifies the inference" that misconduct will recur); *Warwick Capital Mgmt., Inc.*, Advisers Act Release No. 2694, 2008 WL 149127, at *11 (Jan. 16, 2008) ("The existence of a violation raises an inference that the violation will be repeated, and where the misconduct resulting in the violation is egregious, the inference is justified.").

[45] Section 15(b) is cited in this paragraph only for the broker and dealer bars.

This initial decision will become effective in accordance with and subject to the provisions of Rule 360.[46] Under 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.[47] If a motion to correct a manifest error of fact is filed by a party, then a 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.

Addington may move the Commission to set aside the default under Rule of Practice 155(b), which 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.[48] 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.[49] Such motion, if filed, should be directed to the Commission, as the hearing officer may only set aside a default "prior to the filing of the initial decision."[50]

James E. Grimes
Administrative Law Judge

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46 *See* 17 C.F.R. § 201.360.

47 *See* 17 C.F.R. § 201.111.

48 17 C.F.R. § 201.155(b).

49 *Id.*

50 *Id.*